History, Source and Effect of the Illinois Securities Law of 1953 As Amended

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Of the Chicago Bar and the Illinois State Bar

Reprinted from
Smith-Hurd Illinois Annotated Statutes

CHICAGO, Ill.
BURDETTE SMITH COMPANY

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Chapter 121½, Sales

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Analysis

EARLY DEVELOPMENT OF SECURITIES REGULATION

Since the enactment of a statute by Edward I, in the year 1285 requiring brokers to be licensed, society has struggled to improve its laws for the purpose of preventing fraud in the sale of securities.

Widespread securities frauds were practiced early in the 18th Century, thousands of people were victimized and ruined financially by speculation in the shares of the "South Sea Company" and the "Mississippi Company" in 1719. Parliament passed the "Bubble Act" of 1720 and prohibited the use of false charters and rendered brokers trading in such unlawful securities liable to loss of their licenses.

Securities regulation in England continued through the adoption of the Company's Act of 1844, which introduced the requirements of compulsory disclosure through the registration of prospectus inviting subscriptions to corporation shares.

The disclosure requirement was greatly enlarged in the Company's Act of 1900 and strengthened by the Company's Act of 1907, 1928, 1939 and 1947. The 1939 Act supplemented securities regulation in England by requiring the registration of securities dealers.

In the United States, laws pertaining to the regulation of special types of securities were enacted as early as 1852, however, it was not until early in the 20th Century that a securities regulation statute was enacted which could be said to be the "granddaddy" of the various "Blue Sky" laws of the present. The origin of the term "Blue Sky" stems from a judicial decision involving the sale of worthless securities in which the Judge described the securities by stating "speculative schemes which have no more basis than so many feet of 'Blue Sky' ".

Connecticut, Nevada and Rhode Island enacted provisions primarily regulating the sale of mining securities.

In 1911, Kansas enacted a law which is generally recognized as the original "Blue Sky" law.

The Kansas Act provided for the registration of securities and securities salesmen. Certain types of securities were exempt from the provisions of the law. No security required to be registered could be sold until a "permit" was issued. Violations of the registration provisions were accorded criminal sanctions.

By 1911, twenty-three states had adopted "Blue Sky" laws patterned on the Kansas Act.

Many of the early "Blue Sky" laws were declared unconstitutional by various State Courts. In 1917 the U. S. Supreme Court upheld the constitutionality of the "Blue Sky" laws of Ohio, South Dakota and Michigan in three decisions, Hall vs. Geiger-Jones Company, 37 S.Ct. 217, 242 U.S. 539, 61 L.Ed. 480; Caldwell vs. Sioux Falls Stockyards Company, 37 S.Ct. 224, 242 U.S. 559, 61 L.Ed. 493; and Merrick vs. N. W. Halsey & Company, 37 S.Ct. 227, 242 U.S. 568, 61 L.Ed. 498.

The U. S. Supreme Court decided in the Hall case that the Ohio "Blue Sky" law, in requiring dealers in securities to obtain a license by making an application setting out certain information respecting the applicant's business, was a proper exercise of the state's police power, and that such law did not deprive a dealer of his life, liberty or property, without due process of law, and did not deny to the dealer the equal protection of the laws. The Ohio law required the commissioner, as a condition of granting a license, "to be satisfied of the good repute in business of such applicant and named agents," and gave to the commissioner the power to revoke a license or to refuse to renew it upon ascertaining that the licensee "is of bad business repute, has violated any provision of the Act, or has engaged or is about to engage, under favor of such license, in an illegitimate business or fraudulent transaction". The U. S. Supreme Court upheld this delegation of authority.

In the Caldwell case, involving the South Dakota "Blue Sky" law, the U. S. Supreme Court decided that there is nothing in the 14th Amendment to the Federal Constitution which prevents a state from enacting, in the exercise of its police power, a statute which forbids the sale of corporate securities that have not first received the approval of the State Securities Commission, obtainable only after certain prescribed data has been filed with the Commission, and which requires dealers in such securities to obtain a license from the Commission, and forbids them to deal in any other than approved securities, or to transact business on any other plan than that set forth in the statements and papers which they have filed with such Commission.

In the Merrick case, involving the Michigan "Blue Sky" statute, the U. S. Supreme Court found that certain provisions exempting securities listed in a standard manual of information did not constitute a denial of equal protection of the laws and that the title of the law, "An Act To Prevent Fraud And The Sale And Disposition Of

Stocks, Bonds, Or Other Securities Sold Or Offered For Sale", was sufficiently indicative of the contents of the law and did not violate the Michigan constitution.

HISTORY OF BLUE SKY LAW IN ILLINOIS

1917 Illinois "Blue Sky" Law

On June 29, 1917, Illinois adopted a Blue Sky Law consisting of 24 Sections and requiring the registration of securities, and dealers in securities, and imposing penalties for fraudulent violations of the Law. The law became effective on January 1, 1918.

Section 1 required dealers in securities to be licensed. It defined corporations, partnerships or associations engaged in selling securities issued by them, or by others, as "investment companies" and also as "dealers", thereby requiring the licensing of "issuers" as "dealers."

Section 2 required the dealers to file "all lawfully required information" with the Secretary of State before selling the securities.

Section 3 set out certain exemptions from licensing with respect to the disposal of securities.

Section 4 set out an additional exemption from the licensing requirements of the law.

Section 5 related to the provisions of licensing dealers in securities.

Section 6 imposed the duty on the Secretary of State to license applicants that met the requirements of the law, and set out the type of certificate of registration to be issued by the Secretary of State.

Section 7 required annual licensing of licensees.

Section 8 allowed licensees to appoint one or more agents to sell securities, provided such agent was also registered with the Secretary of State.

Section 9 imposed on the Secretary of State the duties of general supervision of all licensees under the Law.

Section 10 set out four grounds for the revocation of a license which were: insolvency, violation of the Act, engaging in illegitimate business or any fraudulent transaction, or if the licensee was in any manner dishonest.

Section 11 provided for notice to the licensee before revocation of his license.

Section 12 provided for judicial review of the act of denial or revocation of a license by the Secretary of State.

Section 13 set out the information required of "issuers." A registration application required a balance sheet, as of a date within one year, an income statement for a period of twelve consecutive months, ending no earlier than the date of the balance sheet, copies of the securities to be sold, copies of articles of incorporation and by-laws, and an appraisal, in the discretion of the Secretary of State. It gave the Secretary of State the power to fix the amount of stock that could be issued for property, patents, goodwill, promotion, and intangible assets; and the Secretary of State was delegated the power to require that securities so issued be deposited in Escrow, under such terms as the Secretary of State might prescribe.

The application and all of the documents relating thereto were to be verified under oath of a proper official of the "applicant."

Section 14 of the Act made it unlawful for any person to transact or engage in any securities business until after compliance with the Act, and placed the duty on the Secretary of State to disapprove the sale of securities if "he finds that the proposed contracts, stocks, bonds, or other securities are fraudulent or that the sale of same in his opinion would work a fraud upon the purchaser."

Section 15 imposed requirements of compliance with the Act with respect to foreign corporations, partnerships, companies or individuals.

Section 16 made it a misdemeanor to violate the Act and provided for a fine of not less than $100 nor more than $1000, or imprisonment in the County jail for not more than one year, or both fine and imprisonment, in the discretion of the court.

Section 17 provided that a licensee would forfeit his license if he failed to comply with any requirements of the law and such forfeiture would remain in effect until approval and the issuance of a certificate of reinstatement by the Secretary of State.

Section 18 required all advertising relating to the sale of securities to be filed with the Secretary of State before use and to bear a serial number issued by the Secretary of State.

Section 19 related to the collection of fees by the Secretary of State.

Section 20 made every sale or contract of sale in violation of the licensing provisions of the Act void and required the dealer making such contract or sale, on request, to return the purchase price to the purchaser.

Section 21 provided for a Statute of Limitations of one year as to prosecutions for violation of the Act.

Section 22 provided for severability of the provisions of the Act in the event that any section should be held unconstitutional.

Section 23 related to the repeal of any conflicting Acts.

Section 24 provided that the Act would be in force and effect on January 1, 1918.

1919 Illinois "Blue Sky" Law

The 1917 Illinois securities law was hastily drafted and in many respects, incomplete, even for the stage of development of "Blue Sky" laws in 1919. Accordingly, the General Assembly of Illinois adopted an Act entitled, "The Illinois Securities Law" which became effective June 10, 1919, after the signature of approval of Frank O. Lowden, Governor of Illinois.

The 1919 Illinois securities law consisted of 43 Sections. It represented a substantial improvement, as a regulatory measure, over the 1917 Act.

The terms "securities", "issuer" and "file" were defined in Section 2 of the 1919 Law.

The term "file" constituted the act of endorsement by the Secretary of State that in his opinion the issuer, dealer or agent had complied with the provisions of the Act. "Filing" was therefore equivalent to the more popular term of today, "registration." The 1919 Law defined the term "securities" broadly to include "stocks, bonds, debentures, notes, participation certificates, certificates of shares of interest, preorganization certificates and subscriptions, certificates evidencing shares in trust estates or associations and profit-sharing certificates."

Securities were divided into four general classes, by the 1919 Law, as follows:

1. Class "A" securities, the inherent qualities of which assured their sale and disposition without the perpetration of fraud;
2. Class "B" securities the inherent qualities of which, or in the nature of one or both parties to the sale thereof, assure their sale and disposition without the perpetration of fraud;
3. Class "C" securities based on established income;
4. Class "D" securities based on prospective income.

Section 4 defined Class "A" securities to include securities issued by a government having power of taxation; issued by a national or state bank or trust company, building and loan association of Illinois,

or an insurance company organized or under the supervision of the Department of Trade & Commerce of Illinois; issued by any corporation operating as a public utility in any state wherein there is or was at the time of issuance thereof, in effect, any law regulating such utilities and the issue of securities by such corporation; securities appearing in any list of securities dealt in on the New York, Chicago, Boston, Baltimore, Philadelphia, Pittsburgh, Cleveland or Detroit Stock Exchange; securities whereof current prices shall have been quoted, from time to time for not less than one year next preceding the offering for sale thereof, in tabulated market reports published as news items, and not as advertising, in a daily newspaper of general circulation, published in Illinois or an adjoining state, including the State of Michigan; securities issued by a not-for-profit corporation or a corporation organized exclusively for educational, benevolent, fraternal, charitable or reformatory purposes; notes secured by a mortgage lien on real estate; notes secured by first mortgage upon tangible or physical property; securities evidencing indebtedness due under any contract for the acquisition of personal property under conditional sale contract; negotiable promissory notes given in connection with the purchase of merchandise in the ordinary course of business running not more than twelve months from the date of issue; and securities designated as subscriptions for capital stock for the purpose of incorporating a company under the laws of Illinois where no commission was paid for the sale of such securities.

Thus, Section 4 primarily related to the exemption of "securities" as distinguished from an exemption for "transactions." Section 5 of the 1919 Law provided primarily for "transaction" exemptions including: securities sold by an owner for his own account not in the course of repeated transactions of a similar nature; the sale of capital stock of a corporation to its stockholders without the payment of any expense to brokers; securities sold by or to any bank, trust company or insurance company or by a building and loan association; or to any corporation or any dealer in securities; securities sold at any judicial sale or at a public sale or auction.

Class "C" securities were issued by persons owning a business which met certain "net profits" requirements as set out in Section 6 of the 1919 Law. Section 6 also prescribed the information to be filed in connection with the "filing" of securities in Class "C" with the Secretary of State.

"Filing" Requirements

All securities not falling in Classes "A", "B" or "C" were known as Class "D" securities. Section 9 of the 1919 Law prescribed the information to be filed in connection with Class "D" securities. The requirements for the "filing" of Class "D" securities included: a description of the securities; a certified copy of the Articles of Incorporation and By-laws or articles of partnership; names, addresses and prior occupations for a period of not less than ten years, of the officers, directors or trustees of the issuer; a description of the business; an inventory of the assets of the issuer; an appraisement of the assets of the issuer; a statement in detail of the gross income of the issuer, the sources thereof, and its operating and other expenses for a period of twelve months prior to the date of filing such statement; a copy of the most recent balance sheet prepared as of a date not more than 30 days prior to the date of filing and giving an analysis of the surplus account of the issuer; a copy of any mortgage securing the securities to be issued; a copy of the form of securities to be offered; a copy of any subscription blanks; a statement as to the manner in which the securities are to be sold; a copy of an irrevocable contract assuring the issuer that it will receive at least 80% of the proceeds of the sale of its securities if the same were to be sold through solicitors, agents or brokers; a summary of the material facts disclosed by the preceding information, and such other facts relative to the securities as the Secretary of State might prescribe.

Execution of Applications

The statements and documents filed were required to be verified by the oath of not less than two of the officers and such oath was required to be taken before a person authorized to administer oaths in the State of Illinois.

The Secretary of State was granted the power under the 1919 Law to require an examination of the books, records and documents of the issuer by a certified public accountant designated by the Secretary of State and the issuer was required to pay the compensation of such accountant.

Escrow of Securities

The 1919 Law provided in Section 12 that if the statements as to securities in Class "D" disclosed that any of the securities were issued for intangible assets, including promotion fees or expenses, that such securities should be delivered in escrow to a bank designated by the

Secretary of State to be placed under an Escrow Agreement providing "that the owners of such security shall in case of dissolution or insolvency not participate in the assets of the corporation until after the owners of all other securities have been paid in full." Such Escrow Agreement was required to remain in full force until the securities of the issuer were eligible for qualification as Class "C" as determined by the "net profits" test set out in Section 4 of the 1919 Law.

Consents to Service of Process

The issuer or person intending to sell securities in Illinois, whether they were Class "C" or Class "D", was required to file an irrevocable consent and power of attorney authorizing suit to be commenced against such person in any court in the State of Illinois arising out of or founded upon the sale or offering for sale of such securities. Section 17 of the 1919 Law required the Secretary of State to examine statements or documents filed with him with reference to Class "C" or Class "D" and to examine same before "filing." If in the opinion of the Secretary of State the sale of such securities would tend to work a fraud on the purchaser, the Secretary of State was required to refuse to "file" same.

Judicial Review

Refusal to "file" statements or documents under the Act, was subject to judicial review under Section 18. The 1919 Law required supplemental information to be filed every six months so long as the securities were offered for sale.

Section 21 required that each financial statement, prospectus, advertisements, circular or documents circulated, published or distributed in connection with the sale of Class "D" securities contain the words, in bold face type, "Securities In Class 'D' Under Illinois Securities Law. These Are Speculative Securities." The Secretary of State was given authority to prescribe and furnish forms for all statements required by the Act to be filed in his office.

Injunction Powers

The Secretary of State was granted the authority to apply for injunctions to restrain the sale of securities if such sale would tend to operate as a fraud or if the terms and provisions of the Act had not been complied with.

Fees

The filing fees for securities in Class "C" or "D" were 1/20th of one percent of the amount of the securities to be offered for sale in Illinois, but in no event was the fee to be less than $25.00 nor more than $300.00. Fines and penalties were provided for solicitors, agents or brokers, issuers, and officers, directors, trustees or agents of issuers, or any other person violating the provisions of the law.

Violations

Section 32 made unlawful any statement or representation by a dealer, agent, or broker, not authorized by the issuer or reasonably predicated upon statements and documents filed by the issuer in the office of the Secretary of State.

Any person knowingly filing an untrue statement with the office of the Secretary of State was deemed guilty of perjury and the filing of a false document was deemed prima facie evidence of knowledge of falsity.

It made unlawful the sale of securities if the issuer was insolvent.

Section 36 of the law made unlawful the sale of securities in Class "D" in any other manner or form as specifically set forth in the information required to be filed under Section 9 of the Act, and provided further that any offer or sale upon any other terms or conditions, other than those set forth, would be considered prima facie evidence that such sale was for the purpose of defrauding the investor to whom such security was offered or sold.

Recission

Section 37 made every sale and contract of sale in violation of the Act void, and every solicitor, agent or broker of such seller, who knowingly performed any act or in any way furthered such sale, jointly and severally liable, upon tender of the securities sold to the purchaser, for the amount paid, together with reasonable attorney's fees of the purchaser.

Qualification of Foreign Corporations

Any issuer desiring to have its securities sold in Illinois was required to comply with the law regulating the "admission of foreign corporations to transact business in this State" pursuant to Section 39.

Statute of Limitations

Section 40 provided that all prosecutions and civil actions to recover money based upon any provision of the Act must be commenced within five years after the commission of the Act complained of.

Constitutionality of 1919 Law

In an opinion filed December 22, 1921, in Stewart vs. Brady, 300 Ill. 425, 133 N.E. 310, the Supreme Court of Illinois held "The Illinois Securities Law" constitutional. The case involved a suit for recission of the sale of "certificates of beneficial interest" of an unincorporated joint stock association. The complaint alleged that the securities were Class "D", that they were sold in violation of The Illinois Securities Law, that the sale was void, that the plaintiff had tendered his securities back to the defendant, and that the defendant was liable to the plaintiff for the sales price and the plaintiff's attorney's fees.

In deciding this case the Illinois Supreme Court made the following rulings: The title of the Act was sufficiently broad to cover the subject matter of the Act; the title of the Act did not embrace more than one subject; the Securities Act is an exercise of the police power of the State; that objects of legislation may be classified for the purpose intended without including all the evils to be remedied; that the classifications in the law were not palpably arbitrary and the classifications made had a reasonable basis; that the privilege of engaging in the securities business is subject to the police power of the State; that the Act does not grant special privileges in violation of the Constitution; that the classifications of Classes "A", "B", "C" and "D" were reasonable and not arbitrary; that the purpose of the Act was not only to protect credulity and ignorance from deception and to prevent fraud, but also to assure credit and freedom of commerce in such securities as, because of their sale or character of the seller are not subject to the practices of fraud to such a degree as in the judgment of the legislature requires legislation for the protection of purchasers.

Amendments to 1919 Law

Between 1919 and 1953, "The Illinois Securities Law" was amended by twenty different Bills of the General Assembly amending 34 sections, adding 14 new sub-sections, repealing three sections and leaving unchanged nine sections.

In reviewing the amendments, only the more important changes will be noted.

1921 Amendments

The definition of "securities" was expanded to include "investment contracts", "evidences of indebtedness" and "any certificate, contract or instrument whatsoever representing or constituting evidence of, or secured by, title to or interest in, or any lien or charge upon, the capital or any property or assets of the issuer thereof, and any oil, gas or mining lease, and interest, units or shares in any such lease or leases."

Definition of Sale

The definition of the term "sale" was added and because of the importance of this term in Securities Regulation, it is set out in full: "the term 'sale' shall mean and include contracts and agreements whereby securities are sold, traded or exchanged for money, property or other thing of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with, or as a bonus on account of, any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term 'sell' shall mean any act by which a sale is made and the term 'sale' or 'offer for sale' shall include a subscription and option of sale, a solicitation of sale, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter or advertising, or otherwise; provided, however, that nothing herein shall limit or diminish the full meaning of the terms 'sale' or 'sell' or 'offer for sale' as used by or accepted in courts of law or equity."

The exemption for Class "A" securities listed on stock exchanges was changed to limit such exemption to securities listed on the New York, Boston or Chicago stock exchange. The so-called "trading" exemption set out in Section 5 of the 1919 Law was completely changed as follows: [securities] "issued and outstanding in the hands of the public prior to June 10, 1919, of corporations whose business have been continuously in operation since that day, provided, that financial statements of the issuing corporation appeared in any standard manual of securities for the year 1920, approved by the Secretary of State, or provided that quotations of such securities have appeared in tabulated market reports published as news items, and not as advertising, in a daily newspaper of general circulation published in the English language, in any city of 200,000 inhabitants or over in the state of Illinois, at least twelve times in each of the years 1919 and 1920, respectively, and at least twelve times during the twelve calendar months next preceding the offering for sale thereof."

Isolated Sales

The exemption for sales by an owner designated as Class "B" in Section 5, Paragraph 1 thereof, was amended to read as follows:

"(1) an isolated sale of any security by a bona fide owner thereof, or his representative, for the owners account, such sale not being made in the course of repeated and successive transactions of a like character, and such owner not being a broker or dealer in securities or an underwriter of such securities."

The legislature also added with respect to Class "C" securities a provision allowing such securities to be offered for sale in Illinois prior to the filing of the "statement" set out in Section 7 provided that, among other things, a bond in the sum of not less than $50,000, payable to the People of the State of Illinois and executed by a surety or guaranty company for the protection of purchasers and conditioned on the filing of the "statement" within thirty days thereafter. Because of the "bond" provisions of this amendment, set out in Section 7(b), the investment bankers did not avail themselves of this opportunity with any frequency.

Appraisals

Section 10 of the law was amended to allow the Secretary of State to designate a "disinterested qualified person" to make an appraisal of assets in connection with the "filing" of securities in Class "D".

Escrow of Funds

In addition, another important responsibility was entrusted to the Secretary of State under Section 11, whereunder the Secretary of State "in his discretion" could require that capital obtained for the sale of securities be held intact until the completion of the sale of the securities or so much thereof, as may, in the opinion of the Secretary of State, prevent loss of such capital or fraud upon the purchasers of such securities.

The Secretary of State, in addition, was given the power to suspend the sale of securities if, in his opinion, the further sale of such securities would work or tend to work a fraud upon the purchasers thereof, and such suspension was subject to judicial review under Section 18 of the Act.

Proof of Exemption

Another very important addition was made by the 1921 Amendment by adding a provision to Section 37 placing the burden of proof to es-

tablish an exemption from compliance with "The Illinois Securities Law" upon the issuer or seller. In addition, the Secretary of State was granted the authority to make investigations under the Act as he deemed proper and expedient.

Paragraph (4) was added to Section 37 and provided that all persons, solicitors, agents, brokers, officers and directors of the seller, who sell securities in violation of the Act, or who in any manner authorize, aid or assist in any unlawful sale, shall be deemed equally guilty and may be tried and punished in the County in which the unlawful sale took place.

Certificate of Noncompliance

Paragraph (5) was added to Section 37 which provided that a certificate of compliance or noncompliance with the provisions of the Illinois Securities Law, by the Secretary of State, would constitute prima facie evidence as to compliance or noncompliance with the provisions of the Act by any issuer, solicitor, agent, broker, dealer or owner, and would be admissible in evidence in any action at law or in equity to enforce the provisions of the Act.

1925 Amendments

The definition of the term "securities" was again expanded to include, among other specifically described securities, "any other instrument commonly known as a security."

The term "issuer" was expanded to include "any natural person who acts as a promoter for and on behalf of a corporation, trust or unincorporated association or partnership of any kind to be formed."

Definitions of the terms "dealer", "broker", and "solicitor" and "agent" were added.

Section 23 was amended to provide a comprehensive method of registering dealers and their agents. Dealers were required to file a bond in the penal sum of $2,000 and, in the discretion of the Secretary of State, a bond in a larger amount, but not in excess of $50,000. Registration as a dealer was open to persons, firms or corporations of "good repute" and solicitors and agents of "good repute" could be appointed by an issuer or dealer upon the payment of a fee of $5.00. The maximum fee required of any dealer for registration as a dealer and for the registration of agents or solicitors was $300.00. The registration of a dealer or solicitor and agent expired on the 30th day of June in each year.

Investigations

The Secretary of State was authorized to conduct an investigation whenever he believed that any registered owner, dealer, broker, solicitor or agent had violated any of the provisions of the Act or was conducting business in a manner tending to work a fraud. The Secretary of State was given the authority to administer oaths and to require persons to appear by subpoena and to submit to examination under oath and to produce books and records pertinent to the question of whether or not there was a violation of law or whether or not the business being conducted tended to work a fraud.

Paragraph (4) of Section 23 provided that upon proper notice the Secretary of State could suspend or cancel the registration of the owner, dealer, broker, solicitor or agent in the offering of securities by such person when, in his opinion, the further sale of securities by such person would work or tend to work a fraud, or when such person has violated any of the provisions of the Act. Orders of suspension or cancellation of a registration were subject to judicial review pursuant to Section 18 of the Act.

In addition, the Secretary of State was given the right to apply for an injunction when, in his opinion, the sale of securities by any owner, dealer, broker or solicitor would work or tend to work a fraud upon purchaser.

Rules and Regulations

Section 25 was amended to give the Secretary of State the power to make all needful rules and regulations necessary to carry the Act into full force and effect. The Secretary of State was given the power to limit the charges and commissions of dealers, brokers, solicitors and agents with respect to Class "D" securities. The Secretary of State was given the right to prescribe and furnish forms for all statements, documents and summaries required to be filed with his office.

Section 29 was amended to make it unlawful for any owner, dealer or broker, and any solicitor or agent, to offer securities for sale without full compliance with the registration provisions of Section 23 of the Act, and made a violation of such requirement, a misdemeanor subject to a fine not to exceed $10,000.00, and imprisonment in the County Jail not exceeding one year, or both.

1929 Amendments

The provision in Section 23 requiring the filing of a bond by persons engaged in the business of selling securities was held unconstitu-

tional by the Illinois Supreme Court. (People vs. Federal Surety Co., 336 Ill. 742, 168 N.E. 401.) Accordingly, new bonding provisions were adopted by the General Assembly in 1929, which provided again that an applicant of good repute before being registered as a dealer must file in the Office of the Secretary of State, a bond in the penal sum of not less than $2,000.00 nor in excess of $50,000.00. The Secretary of State was to fix the amount of the penalty of such bond by investigating and taking into consideration the proposed method of transacting business and the financial standing of the applicant for registration. The action of the Secretary of State in fixing the penalty of the bond was subject to review in the Circuit Court of Sangamon County.

An amendment to Section 4 added the "Board of Trade of the City of Chicago" as a recognized stock exchange on which securities listed and dealt in would be considered as Class "A" securities. Section 4 was amended by six different Acts of the 56th General Assembly in 1929. None of the changes were of any particular significance.

1931 Amendments

A new class of securities, investment contracts, was added by an amendment to Section 3, and the addition of Section 6(a) and 6(b) relating to the documents required for compliance with "filing." Investment contracts were defined as installment investment certificates which contemplate that the issuer will pay to the holder a sum of money at a future time, in consideration of payments made by the purchaser or holder. The issuer of investment contracts was required to deposit and maintain with the State Treasurer of the State of Illinois a deposit of securities in an amount of not less than the issuer's current contractual liability on such outstanding contracts, and in no event, in an amount of not less than $50,000.00. Another class of securities designated as investment trusts was provided for by an Act adopted in 1931. Section 7(a) was added to provide for the requirements of "filing" of securities of "investment trusts."

1932 Amendments

The bonding provisions of Section 23 were again held unconstitutional. (People v. J. O. Bedsman & Co., 347 Ill. 92, as amended in 1929, 179 N.E. 435.) The General Assembly therefore amended Section 23 to delete the bonding provisions and to prescribe detailed provisions as to the requirements of the registration of a dealer and broker and a solicitor and agent. Provisions relating to the suspension or cancellation or refusal of registration by the Secretary of State

were continued and such acts were subject to judicial review. Eleven different grounds for refusal or revocation of a registration of a dealer and broker were set out in Section 23(e). Eight different grounds for the revocation or refusal of a registration of a solicitor and agent were set out in Section 23(f).

The foregoing amendments to Section 23 were adopted at a special session of the legislature in 1932.

1933 Amendments

A definition of the term "net profits" as used in the determination of the earnings qualifications for Class "C" securities was added to "The Illinois Securities Law."

A provision was added to the exemption for securities listed on a recognized stock exchange whereby the Secretary of State, after notice, could withdraw the exemption with reference to any security listed on any one of the exchanges set out in Section (4) (a).

An important provision was added to the definition of "sale" and is set out in full:

> "The terms "sale", "offer for sale" or "sell" shall not include the execution of orders for purchase of securities by a licensed dealer or broker provided such dealer or broker acts as agent for the purchaser, has no direct interest in the sale or distribution of the security ordered, receives no commission, profit or other compensation, other than the commissions involved in the purchase and sale of the security, and delivers to the purchaser written confirmation of the order which clearly itemizes his commission, profit or other compensation."

An important amendment relating to power of the Secretary of State to prohibit the sale of securities designated as Class "A" was provided by the amendments of 1933. Section (4)B was added and it provided that the Secretary of State, after notice, might suspend the sale of Class "A" securities, except securities issued by the United States Government or any agency thereof, or the State of Illinois, or any political subdivision thereof and certain other exceptions. The power was granted to the Secretary of State to continue the suspension of such Class "A" securities if he found that the methods of sale were unfair, inequitable, or fraudulent.

Section (5) was amended by deleting the exemption for the sale of securities "by" any bank, trust company or insurance company or "by" any building and loan association. The exemption for sales "to" such persons was continued.

An exemption for the issuance of securities in connection with a bona fide reorganization, recapitalization or refinancing was provided by Paragraph 6 of Section (5) relating to Class "B" securities.

Section (6) relating to Class "C" securities was amended to provide that notwithstanding the fact that documents submitted to the Secretary of State appeared to meet the requirements of the Act, the Secretary of State shall have the power and authority to refuse to "file" such statements where "the financial condition of the issuer is unsound, or there are other conditions affecting the soundness of the security, so that the sale or offer for sale of such securities would work or tend to work a fraud."

Provisions relative to the registration of investment contracts and investment trusts were changed and improved. A limitation on commissions on the sale of investment trust shares was provided by Section 7(a) (4) which provided "no investment trust shares shall be sold unless, on the date of sale to the public, the market value of the securities underlying the same plus the fair market value of any other property and cash applicable to each investment trust share sold, is equal to not less than 90% of the sales price of such investment trust share to the public."

Section (9) relating to Class "D" securities was amended to require that a copy of the most recent balance sheet of the issuer, showing the financial condition of the issuer at a date not more than 60 days prior to the date of filing, be filed with the Secretary of State. Previously it was required that the balance sheet be prepared within a date not more than 30 days prior to the date of filing.

The requirements of a legend on subscription blanks for Class "D" securities was changed to read as follows: "These are Speculative Securities."

Section 11 was amended to require that all financial data filed under Sections 6(b), 7, 7(a) and 9 of the Act be prepared, and certified to, by a certified public accountant, or a public accountant licensed as such.

The Secretary of State was also authorized to make investigations concerning the business, affairs and property of an issuer, and to charge the cost of such investigation to the applicant, provided that such applicant would not be obliged to pay such costs without his or its consent in advance.

Section 21 was amended to make it unlawful for anyone, relative to any security, to make any false or misleading representation. In addition, it provided that the advertising, except with respect to secu-

rities described in Sections 4 and 5 of the Act, must be submitted for approval by the Secretary of State, prior to use.

The amendments adopted in 1933 constituted a thorough overhauling of "The Illinois Securities Act."

1935 Amendments

Minor clarifying amendments to "The Illinois Securities Law" were adopted in 1935. The definition of "sale" was amended to add the phrase, "where no solicitation for the sale or offer for sale of such security has been made by such dealer or broker", to the exclusion of so called "agency" purchases by dealers, from the definition of "sale."

Section 4(10) was amended to require that Class "A" promissory notes be "issued within 3 months after date of sale" and that they be "not used as a scheme to evade the provisions of the Act, and where no provision for a renewal is contained in such promissory notes or commercial paper."

The exemption for subscriptions to or the sale of capital stock of an Illinois corporation set out in Section 4(11) was set up in alternative fashion by providing that "(1) the number of such subscribers shall not exceed 25, or (2) the amount of capital to be raised does not exceed $10,000;"

Various minor changes relating to the registration of "dealers" or "brokers" were made including the addition of Section 23(h) which provided that the Secretary of State could, as often as deemed necessary and proper, appoint a suitable person to make an examination of the affairs of every dealer registered under the Act. Other minor changes concerned primarily administration and enforcement duties of the Secretary of State.

1939 Amendments

The definition of Class "A" securities was broadened to include issuers controlled, or supervised, or acting as an agency or instrumentality of the United States, or as an agency or political instrumentality of one or more of the States of the United States. In addition, the Class "A" exemption for securities of banks was extended to include banks organized under the laws of States, other than the State of Illinois, if such state bank was located in a city having a population of at least 500,000, and if its capital was represented by outstanding stock in the amount of one million dollars, and if its surplus and undivided profit aggregated at least one million dollars.

National building and loan associations, insurance companies organized under the laws of the State of Illinois, and insurance companies

organized under the laws of any state, provided such insurance company had been in continuous operation for not less than nine years, and was subject to the jurisdiction of the Department of Insurance of the State of Illinois, were added to the securities exempt as Class "A" securities.

The exemption for Class "A" securities was extended to bonds or notes secured by a first mortgage lien upon the fee of real property if the aggregate face value of such bonds or notes did not exceed $25,000 and also did not exceed 50% of the fair market value of the fee of such real property.

Section 4 was also amended to add as Class "A" securities, negotiable promissory notes, bills of exchange or banker's acceptances given for full value and for the sole purpose of evidencing or extending the time of payment of the price of merchandise, or which arise out of current transactions provided such notes had a definite maturity at the time of issuance of not exceeding nine months and were not sold in connection with the promotion of any entrprise.

Section 5 relating to Class "B" securities was amended to prevent the use of the exemption, relating to the sale in good faith by an owner of his securities, by a promoter of the issuer; the exemption for sales by a corporation to its stockholders was further limited to require that no commission be paid in connection with the sale of such securities; the exemption for sales of securities to a corporation or a dealer was broadened to include "any association engaged as a part of its business in purchasing securities"; and the "trading" exemption set out in Paragraph 7 of Section 5 was clarified by adding language extending such exemption to exempt securities, and to expressly state that such exemption was not available if the Secretary of State had revoked the original exemption or qualification, or if the sale of such securities was subject to an injunction.

Section 6A, relating to "investment contracts" was amended to spell out the duties of the Secretary of State in connection with the liquidation of securities on deposit with the Secretary of State for the protection of holders of such securities residing in the State of Illinois.

For the first time, the General Assembly amended the Illinois Securities Law to expressly facilitate coordination of the requirements of the Illinois Securities Law with the requirements of the Federal Securities Act of 1933. Section 7 relating to the requirements for the "filing" of information relating to Class "C" securities with the Secretary of State was amended to provide that information required to be filed under the Federal Securities Act of 1933 could likewise be filed with the Secretary of State and a "registration" of such securities made by the Secretary

of State. For the first time the term "registration" was applied to securities in the Illinois Securities Law. Previously, action by the Secretary of State was referred to as "filing."

In addition, two important amendments relating to Class "D" were added. The Secretary of State was given discretion to waive the filing of an inventory and appraisement, in the case of an issuer of Class "D" securities, provided such issuer had been in business for a five year period, and had a net profit for any two of such five years. In addition, the Secretary of State was given discretion to waive the requirement that securities issued by a Class "D" issuer of securities in connection with intangible assets such as patent or promotional expense be escrowed, if such issuer had been in business for a five year period and had net profits in any two of such five years.

In addition, the Secretary of State was given the discretion to extend the time for filing supplemental statements, to allow issuers to coordinate the filing of such supplemental statements with the preparation of their year-end or semiannual audits.

1941 Amendments

The 1941 amendment to the Illinois Securities Law was confined to Section 6A pertaining to "investment contracts." The primary purpose of such amendment was to define "contract liability" for the purpose of determining how much securities must be kept on deposit by the issuer to equal such "contract liability." "Contract liability" was defined to include all "contracts" sold in the State of Illinois.

1945 Amendments

The limitation of $10,000 was raised to $25,000, with respect to the Class "A" securities exemption, relating to subscriptions for, or sales of, capital stock of an Illinois corporation.

The "trading" exemption for dealers set out in Section 5, relating to Class "B" securities, was again amended to provide an exemption for the resale by a dealer, of securities acquired in the ordinary and usual course of business, at a price reasonably related to the current market price at the time of acquisition, provided such resale was at a price reasonably related to the current market price at the time of resale, and provided such security was issued by an entity domiciled in the United States, and that the security was outstanding, and there was published certain financial information relating to such issuer in a recognized manual of securities. In addition, it was provided that such exemption was not available and was subject to suspension by the Secretary of State if the resale of such security was for the direct or indirect benefit of the issuer of

such security, or for the promotion of any scheme which tended to work a fraud upon the purchaser.

Section 11 of the Act was also amended to provide that the requirement as to certification of financial data with respect to Class "C" securities registered with the SEC need be "so prepared and certified only to the extent then being required by the provisions of and regulations under the Federal Securities Act."

In addition, the actions of the Secretary of State were made subject to judicial review under the "Administrative Review Act", approved May 8, 1945, and all amendments thereto.

1947 Amendments

The amendments adopted in 1947 related to "investment funds" commonly known as open-end mutual funds.

The former designation of such securities as "investment trust" securities was changed to "investment funds" and the terms "investment companies" and "investment trusts" were used to indicate the different types of issuers of "investment fund shares."

Section 7(a) was amended to bring the statute up to date with respect to the type of information required in the initial registration of such "investment fund shares" and to the additional information required periodically since such "investment fund shares" are continually offered for sale by the issuers.

LEGISLATIVE BACKGROUND OF THE ILLINOIS SECURITIES LAW OF 1953

The primary responsibility for the drafting of the Illinois Securities Law of 1953 belongs to the Securities Division of Charles F. Carpentier, Secretary of State of the State of Illinois.

While the 1953 Law in good measure is based on a draft of a proposed securities law prepared by the Securities Committee of the Chicago Bar Association and provisions of the former "Illinois Securities Law", the primary responsibility for determining the content of the 1953 Law, the work of disseminating drafts of the proposed law, and the reconciliation of the various interests involved was the responsibility and work of Secretary of State Carpentier and members of his staff.

The present Illinois Securities Law of 1953 was introduced in the General Assembly as House Bill 146 in February, 1953, by Messrs. Arrington, Reum and Sullivan. Drafts and redrafts of the proposed

law were prepared, and many conferences were had with various groups and individuals. As a result, when House Bill 146 was finally amended, it was adopted unanimously, by both the House of Representatives and the Senate.

The Illinois Securities Law of 1953 retains the basic so-called "paternalistic" approach to securities regulations, including the registration of securities, the registration of dealers and salesmen engaged in the business of selling securities and the anti-fraud provisions and penalties.

The present Illinois Securities Law of 1953, as amended in 1955, is in the opinion of many persons, one of the two or three best "Blue Sky" laws in the United States.

Some of the provisions of the "Uniform Securities Act" were patterned on provisions of the "Illinois Securities Law of 1953".

It should also be pointed out that the administration of the Illinois Securities Law of 1953 has been exemplary. Experienced observers advise that citizens of the State of Illinois get more investment protection for their administrative dollar by the administration of the Illinois Securities Law of 1953 than the citizens of any other State in the United States. The Illinois Securities Division of the Secretary of State commenced the publication of an Annual Report in the year 1954 setting out accomplishments of the administration of the Illinois Securities Law of 1953. For a detailed explanation of policies and work of the Securities Division of the Office of the Secretary of State, attention is invited to such Annual Reports prepared each year by the Office of the Secretary of State and available to the public upon request.

The advances and accomplishments of the Illinois Securities Law of 1953, as amended in 1955, were and are as follows:

(1) Definitions were clarified and patterned on similar definitions in the Federal Securities Act of 1933;

(2) Exemption provisions were changed and brought up to date;

(3) Registration provisions were changed to facilitate coordination with concurrent registration under the Federal Securities Act of 1933, including requirements as to certifications of financial statements by independent auditors;

(4) An exemption was provided for small offerings to not more than 15 persons in any period of 12 calendar months. This provision was designed primarily to aid small businesses in the raising of capital;

(5) The use of prospectii in selling registered securities was made mandatory, and the use of identifying statements and preliminary prospectii were made permissive;

(6) Registration and regulation of investment advisers was provided for;
(7) Statutory requirements as to appraisals and legends were eliminated; and
(8) Criminal penalties for fraudulent activities were increased.
(9) Substituted service of process was provided for.

THE ILLINOIS SECURITIES LAW OF 1953

Introductory

In determining whether or not the sale of any security should be registered under the Securities Law of 1953, the general premise should be that the sale of every security in the State of Illinois must be registered unless exempt. The next determination should be whether or not the security is of a type which is expressly "exempt".

Failing to find such an exemption, attention should be directed to whether or not the sale of the security will be made in an "exempt transaction". If the security is not "exempt" or is not being sold in an "exempt transaction" then you should determine whether or not it should be registered as an investment fund share under Section 7, or registered under Section 8, or is to be registered under Section 5 of the Illinois Securities Law.

Definitions

Securities—The 1953 Securities Law streamlines the definition of the term "securities" without intending to limit the broad coverage and scope of the term "security" as stated in the present Securities Law. In addition to the more ordinary terms applied to securities, the definition in the law covers "participation in any profit sharing agreement", and "any interest or instrument commonly known as a security". Broad interpretations of the definition of securities, in order to accomplish the purposes of the Securities Law in the prevention of fraud is applicable to the Law. (Where the sale of land under a contract allowing the purchase price to be paid from profits was held a security.—See Frenzel v. Lonnquist Co., 304 Ill.App. 377, 26 N.E.2d 687. Where beneficial interest in a building trust used to finance construction were held to be securities.—See Glen v. Dodson, 347 Ill. 473, 180 N.E. 393. Where the sale of interest in a common law trust known as a "Trustees Land Syndicate" were securities.—See Kinross v. Cooper, 224 Ill.App. 111. See also Securities and Exchange Commission v. C. M. Joiner Leasing Corporation, 64 S.Ct. 120, 320 U.S. 344, 88 L.Ed. 88; Securities and

Exchange Commission v. W. J. Howey Company, 66 S.Ct. 1100, 328 U.S. 293, 90 L.Ed. 1244.)

Issuer—This term includes every person who proposes to issue any security. The Law provides that the issuer, in respect of fractional interest in oil, gas or other mineral lease, right or royalty, means the person creating such fractional interest for the purpose of sale.

Controlling Person—This was a new term introduced by the 1953 Securities Law requiring that a "controlling person" register his securities prior to sale in the State of Illinois. The definition of a controlling person was defined as a person selling a security, or a group of persons acting in concert in the sale of a security, owning beneficially, or controlling directly or indirectly, such number of outstanding securities of the issuer of such security as would enable such person to elect a majority of the board of directors. This test was easier to apply and more definite and certain than the definition of "controlling person" under the Federal Securities Act of 1933. (See Rule 405 under the Securities Act of 1933.)

Sale—The term "sale", under both the 1919 law and the 1953 law, is a broad term covering within its scope the solicitation of a sale as well as a completed sale. The term sale under the 1953 law was defined so as to allow the use of the preliminary prospectus and identifying statements which use is permissible under the Federal Securities Act of 1933. The term "sale" does not include "a privilege to convert a security into another security providing no consideration from the holder in addition to the surrender for cancellation of the convertible security is required to effect the conversion".

Underwriter—This term includes any person who has purchased a security from, or is selling securities for, an issuer or controlling person in connection with the distribution of such security and represents a new definition to the Illinois Law, although the term has long been used in the Federal Securities Act of 1933.

Dealer—A dealer was defined to include any person engaged in the sale of securities, other than a bank or trust company.

Salesman—The term "salesman" was substituted for the term "solicitor and agent" used in the 1919 Law and included any person employed by a dealer, issuer or controlling person to sell securities in this state.

Investment Contract—This term included any form of "face amount certificate" or "periodic payment plan certificate", or installment investment contract or similar security evidencing an obligation on the part of the issuer to pay a stated sum or sums at a fixed date or dates more

than twenty-four months after the date of issuance. This definition seemed to restrict the meaning of the broad term "investment contract" as used in the Federal Securities Act and under many of the Blue Sky Laws of the various states. (See Minn. v. Lorentz, 221 Minn. 366, 22 N.W.2d 313; People v. White, 12 Pac.2d 1078, 124 C.A. 548; Indiana Atty. Gen. opinion April 22, 1925; Iowa Atty. Gen., Dec. 20, 1933; S. E. C. v. W. J. Howey Co., 66 S.Ct. 1100, 328 U.S. 293, 90 L.Ed. 1244)

Investment Fund Shares—This term included securities issued by persons known as investment funds or investment companies and included any instrument issued by them representing interests in a trust or fund, the assets of which trust or fund or shares of capital stock of a corporation consist principally of securities held under an appropriate agreement for the benefit of the holders of such interests by a bank or trust company with capital, surplus and undivided profits of not less than $2,000,000.00

Exempt Securities

Generally, the 1953 Law, with certain important differences hereinafter related, and the 1919 Law exempted from registration, securities issued by federal, state or local governments, foreign governments, securities issued by banks and trust companies, securities issued by building and loan companies and insurance companies, securities issued by public utilities, securities listed on the New York Stock Exchange, the American Stock Exchange, the Boston Stock Exchange and the Midwest Stock Exchange and the Board of Trade, securities of a charitable corporation, conditional sales contracts, first mortgage notes, junior mortgage notes, nine month promissory notes, and subscriptions for stock of the corporation prior to incorporation. Each one of these exemptions has important qualifications and before relying upon any such exemption study should be given to make certain that the qualifications are met.

The exemptions under the 1953 Law were liberalized to the extent possible where such action was not inconsistent with protection for the investor. Some of the more important changes are set out in detail following.

The exemption for securities of a bank was extended to banks of any other state, if such banks are subject to supervision by such other state and if the principal place of business of such bank was located in a city having a population of at least 500,000 and having capital represented by outstanding stock in the amount of $1,000,000 and having surplus and undivided profits aggregating $1,000,000.00. An exemp-

tion was created in the Law for securities issued under the Common Trust Fund Act of Illinois by any bank or trust company.

The 1953 Law eliminated the qualification in the exemption for securities of railroads and public utilities companies that the issuer must obtain more than 50% of its total revenue for the fiscal year in the operation of a Railroad or public utility to which the issuer has title and which is situated in the jurisdiction of the commission having such regulatory power. The principal test for determining the exemption of a public utility or railroad holding company or operating company was whether or not the issuance or guarantee of the security of such issuer is supervised or regulated by another public commission or board.

The 1953 Law provided an exemption for "equipment trust securities" if such securities are issued in connection with equipment leased or conditionally sold to a public utility or railroad, the issuance of securities of which would be subject to regulation by public commission.

The 1953 Law imposed an additional requirement for exemption of securities of charitable corporations, in that no part of the earnings of such not for profit corporation may inure to the benefit of any private stockholder or member. An opinion of the Attorney General under the 1919 Law held that a security of a charitable corporation organized under the not for profit act was exempt, even though its securities provide for some type of remuneration to those stockholders. Consequently, any such corporation, even though organized under a not for profit law, must register its securities before sale, if any part of its earnings inure to the benefit of any private stockholder.

The exemption for securities represented by conditional sales contracts was extended to the acquisition of personal property as well as real property.

An entirely new exemption was created for the sale of stock of cooperative associations organized exclusively for agricultural, producer, marketing, purchasing or consumer purposes if the aggregate amount of such issued and outstanding capital stock and paid in surplus of such cooperative association does not exceed $50,000.00 and if the aggregate amount of such stock of such cooperative association held by any one natural person does not exceed $1,000, or if no commission or other remuneration is paid on account of such sale.

The 1953 Law opened the exemption for subscriptions to the sale of stock of a corporation prior to incorporation to corporations formed under the laws of any state, and does not restrict this exemption to Illinois corporations. Thus, it became possible to form a Delaware corporation, or a Pennsylvania corporation, or a corporation in another

state, with Illinois subscribers, without violating the Illinois Securities Law.

Exempt Transactions

The 1953 Securities Law and the 1919 Law both generally provided, with certain important exceptions hereinafter noted, for exemption from registration for sales of securities in the following types of transactions:

Sales by the owners of securities, if such owners are not issuers, underwriters or controlling persons; the sale or exchange by an issuer of its securities to or with its own stockholders if no commission or other remuneration is paid or given, directly or indirectly, on account of such sale or exchange; sales to institutional buyers, including corporations and associations engaged in the business of purchasing securities; sales by fiduciaries; sales of issued and outstanding securities, where financial information is available in recognized financial manuals; and the issuance of securities of a corporation to creditors or security holders of such corporation under a plan of reorganization approved by a court of law.

The addition of the words, "whether through a dealer or otherwise" relating to sales by a bona fide owner of securities, if such owner is not an issuer, underwriter, dealer or controlling person, is expected to change the comparable exemption in the 1919 Law as interpreted in the case of Scully v. DeMet, 323 Ill.App. 74, 55 N.E.2d 101. In that decision, it was held that securities could not be sold through a dealer without losing the benefit of the exemption. The mere fact that a dealer is used in connection with the disposal of securities by an owner should not operate to vitiate this exemption and therefore the above quoted words were added to the new law.

The former exemption for the sale or exchange by an issuer of its securities to or with its own stockholders was broadened to allow an exemption for the sale or exchange to holders of evidence of indebtedness and to allow a fee to be paid to underwriters based on their undertaking to purchase any securities not purchased by security holders, in connection with such sale or exchange. The phrase, in such exemption, "if no commission or other remuneration is paid or given directly or indirectly for or on account of the procuring or soliciting of such sale or exchange" eliminates solicitation by an underwriter or dealer of the old stockholders or holders of evidence of indebtedness to exchange their securities, if any fee is paid to the underwriter in connection with the distribution of securities. It is the intention of this section to allow an exemption only where the stockholder, or holder of evidence of indebted-

ness, voluntarily agrees to exchange his or her securities without any solicitation on the part of underwriters, dealers or agents for the issuer.

In addition, a new exemption was created for the conversion of securities if the holders of such convertible securities receive the right to convert at the time of issuance of such convertible securities, and provided no commission is paid to solicit such conversion and no consideration is needed to effect the conversion.

The exemption for sales to institutional buyers was broadened to include sales to pension funds or pension trusts and to employees' profit sharing trusts. In addition, the exemption for the sale of fractional undivided interest in oil, gas or other mineral lease, right or royalty to a trader buying and selling such interests, in frequent operations, for his own account rather than for the account of customers to the extent that he may be said to be engaged in such activities as a trade was provided. This exemption was derived from a definition set out in the Internal Revenue Code.

The exemption for sales by dealers was broadened to allow sales by a dealer where he is acting as an agent as well as "principal" and will allow him to handle trading transactions unless made by an "underwriter" or "controlling person". In addition, the exemption for sales by a dealer was streamlined to exempt sales at a price reasonably related to the current market price if a security was issued by an issuer domiciled in the United States, and financial statements as of a date not more than eighteen months prior to the date of such sale are published in a recognized financial manual. The exemption under the 1919 Law, for the resale of securities within three years after a registration under the Illinois Securities Law, was eliminated because the three year period was too long, in view of the need for current financial information, and although such information would be available to the investor, it was not readily accessible to the investor, whereas recognized financial manuals can be obtained in practically every public library.

A panacea to the difficulty that most lawyers encounter during their general practice is found in the exemption for the sale of securities by an issuer or controlling person in any period of twelve months to not more than fifteen persons providing no commission in excess of fifteen per cent is paid on account of the sale, and the issuer or controlling persons files a report of sale within thirty days after such sale, with the Secretary of State, stating further, (1) the name and address of the issuer or controlling person, (2) the total amount of securities under such subsection, (3) the price at which the securities were sold, (4) the commission paid, (5) the name and address of the purchaser. This exemption was in lieu of a so-called "private offering" as provided in the

Federal Securities Law. The Illinois definition provides certainty as to the number of offerees under such exemption. This exemption was also in addition to any distributions under the provisions of Section 5 of the Securities Law, as well as the sale of securities in transactions exempt under Section 4. The total selling price of the securities may be in any amount so long as the other qualifications are met. Failure to file the report will preclude the use of this exemption and make any such sale unlawful.

A similar exemption was also extended to the sale of fractional undivided interest in any gas, oil or mineral lease, right or royalty. The exemption for oil and gas securities was given comparable treatment to subscriptions for shares of a corporation, in that sales may be made to more than fifteen persons in respect of fractional undivided interest in an oil lease, if not more than $25,000 is raised in any period of twelve consecutive months.

The 1953 Law also provided an exemption for the issuance of securities to existing securities holders in connection with a statutory consolidation or merger. This exemption has no background under the 1919 Law, but it is felt that the statutory safeguards provided under the various state business corporation laws are sufficient to protect the investor without imposing the ordinary disclosure requirements.

Registration of Securities

The Securities Law of 1953 divided securities into three broad classifications, namely, investment fund shares, investment contracts and all other types of securities. The former statutory classification of "A", "B", "C" and "D" were eliminated.

Investment fund shares, being securities issued by investment companies or investment trusts or investment funds representing interests in assets consisting principally of securities, and held under a proper custodianship by a bank having an aggregate capital surplus and undivided profits of not less than $2,000,000, are registered under Section 7, which required practically the same information as was set out in Section 7a of the 1919 Law. No important differences are made by the 1953 Law.

Investment contracts must be registered under Section 6 of the 1953 Securities Law. Investment contract as defined under Section 2 of the Law was any type of investment contract evidencing an obligation on the part of the issuer to pay a stated or determinable sum or sums at a fixed or determinable date more than twenty-four months

after date of issuance, in consideration of the payment of periodic installments or of a lump sum. The issuer of such a contract must establish and maintain with the Secretary of State deposits of debt securities of a type, in which Life Insurance Companies organized under the laws of the State of Illinois are permitted to invest their funds, in an amount of not less than $100,000.00 and at no time less than the current contract liability on all such investment contracts held by persons residing in the State of Illinois. There were several new provisions in this section relating to investment contracts, including the duty of the Secretary of State to charge a custodian fee on a quarterly basis for maintaining such deposit. Since investment contracts are of relatively small interest to the general issuer seeking to qualify under the 1953 Illinois Securities Law, further detail will not be given.

The usual type of security will be registered under Section 5 of the 1953 Law and may be registered under any of three subsections, depending on the circumstances.

Section 5A provides for "registration by notification". This subsection allows a summary method of registration for securities which are registered under the Federal Securities Act and which meet with earnings test set forth therein. Briefly this earnings test requires that the issuer of the security proposed to be registered, own or control a business that has been in continuous operation not less than five years and which has had for a period of not less than thirty-six nor more than sixty consecutive months ended not more than six months preceding the filing provided for in subsection 5A, average annual net earnings after all taxes and interest, but not deducting interest charges or dividends or both, as the case may be, upon securities to be retired, as follows:

(a) as to interest-bearing securities, not less than one and one-half times the annual interest charges thereon and one times on all other interest-bearing securities to be outstanding;

(b) as to shares of stock having a specified dividend rate, not less than one and one-half times the annual dividend requirements thereon and on all other shares of stock to be outstanding and ranking equally or prior thereto as to dividends;

(c) as to shares of stock not having a specified dividend rate, not less than 6 per cent of an amount determined by multiplying the total number of shares of such stock and of all other stock to be outstanding and ranking equally as to dividends, by the price per share or, if the price is not fixed but is to be determined by a method, the maximum price per share, at which the shares of stock to be registered are to be offered.

With certain qualifications, it is not necessary to compute this earnings coverage on securities to be retired, with the proceeds of the securities being sold, and it is possible to include the earnings or losses of a business owned or controlled by the issuer for only a portion of the consecutive period above referred to. This registration may be completed within twenty-four hours after filing, and the only information necessary to be filed under the statute is two copies of the prospectus and all amendments thereto filed under the Federal Securities Law, a consent to service by the issuer, unless the issuer is already registered to do business in the State of Illinois, and a statement by the applicant setting forth the title of the securities, and the amount to be offered in Illinois, under Section 5A.

"Registration by Notification" cannot be accomplished if the underwriter is paid a commission in excess of 15 per cent or if the underwriter receives any warrant or option to purchase securities, or if a "finder's fee" has been paid by the issuer to any person in connection with the negotiation of the sale of such securities.

"Registration by Description" is available to issuers filing under the Federal Securities Act, which do not meet the earnings test or the other qualifications provided in Section 5A.

Information required to be filed under this section is comparable to information formerly required of a Class "C" security under the 1919 Law, and includes the following: Two copies of the registration statement filed with the Securities and Exchange Commission, including amendments; copy of the charter or similar instrument; a copy of the by-laws; a copy of any indenture material to the issue; specimen copies of the securities to be sold; an opinion of counsel as to the validity of the securities; a copy of the underwriter and sales agreement; and a consent to service of process.

The use of Section 5B, "Registration by Description", is not available if the underwriter receives commission in excess of 15 per cent.

Section 5C, "Registration by Qualification" is available to any issuer whether or not registered under the Federal Securities Act, except an issuer of investment contracts and investment fund shares, and requires detailed information concerning the history of the issuer, its assets and its officers and directors, in addition to the above requirements under Section 5C, the Secretary of State is given the power to prescribe appropriate forms of registration for securities of mining companies and oil and gas companies. Commissions to dealers could not exceed 20 per cent of the offering price under this subsection.

The requirement of "sixty day certified financial statements" was eliminated under the 1953 Law and financial statements prepared as of a date within 120 days prior to the date of submitting the application may be used. If such balance sheet, so submitted, is not certified by independent certified public accountant, there shall also be submitted a balance sheet certified by an independent public accountant as of the close of the issuer's last fiscal year, unless such fiscal year ended 120 days prior to the time of submitting the application, in which case the certified balance sheet may be as of the end of the preceding fiscal year. The above provisions apply to a registration under Section 5C. Financial statements satisfactory to the Securities and Exchange Commission may be used under Sections 5A and 5B.

All registrations under Sections 5A, B or C terminate automatically one year from the date of registration except that such registration may be terminated earlier by voluntary action of the applicant or by the Secretary of State. Fees for registration were the same under the 1953 Law as were provided in the 1919 Law, being one-twentieth of one per cent of the aggregate price at which the amount of the securities registered for sale in this state are to be offered for sale. In no case will the fee be less than $25.00 or more than $300.00.

It is no longer necessary under the 1953 Securities Law for an issuer to qualify under the Business Corporation Act before offering securities in the State of Illinois pursuant to a registration, however, it will be necessary for such issuer to file a consent to service of process with the Secretary of State prior to such sale.

Registration of Dealers and Salesmen

The Securities Law of 1953 uses the term "dealer" instead of the term "dealer and broker" and the term "salesmen" in place of the old term "solicitors and agents".

Generally, the requirements of registration are the same in the 1919 Law and the 1953 Law. Under the 1919 Law, brokers and dealers and solicitors and agents had to re-register on July 1 of each year. The new law provides that dealers and salesmen may register annually on a date, which they may select for their own convenience, and will generally be timed with the commencing of their fiscal year. The registration fee of dealers was raised from $25.00 to $50.00.

Powers and Duties of the Secretary of State

The Secretary of State was given broad duties and powers under the Securities Law of 1953, including the right to make rules and regulations, prescribe accounting practices, define trade terms and to prescribe

forms for registration. The Secretary of State may require escrows of securities or funds derived from the sale of securities in appropriate cases. He may require an appraisal by an independent qualified appraiser, if it is deemed necessary for the protection of the public. Discretionary power to refuse to register any security, if there are conditions affecting the soundness of the security so that the sale of such security would be inequitable or would work or tend to work a fraud, was given to the Secretary of State. In the enforcement of the 1953 Securities Law, the Secretary of State is empowered to make investigations and to subpoena witnesses, take evidence and conduct investigations.

The power to prohibit or suspend the sale of any securities may be invoked by the Secretary of State, if a determination is made that such sales are fraudulent, inequitable or would work or tend to work a fraud or deceit. The Secretary of State may revoke the registration of dealers or salesmen or securities after proper hearing, subject to judicial review in the Circuit Court of any county in the State of Illinois. In addition, the Secretary of State may, through the Attorney General, apply for an injunction to stop violations of the Securities Act.

Violations

The 1953 Securities Law and the 1919 Securities Law both provide that sellers of securities in violation of the law are jointly and severally liable for the full amount paid or received, together with reasonable attorneys' fees. The new Law also requires that the sellers be liable for the stipulated interest or dividend rate payable on such securities and if there is no stated interest or dividend rate, then the legal rate of interest is collectible for the period from the sale of the security until the date of rescission.

A new provision added by the 1953 Securities Law allows a seller in violation of the law to foreclose liability by offering to repurchase the security sold in violation of the law, by sending an offer of repurchase by registered mail to the purchaser. In the event that the purchaser does not elect to rescind such transaction within 30 days after receipt of the offer of repurchase, then and in such event civil liability for such sale is terminated. The statute of limitations on both civil and criminal liability is limited to 3 years under the 1953 Law.

The sale of securities without compliance with the provisions of the Securities Law; the sale of securities without the delivery of a prospectus; acting as a dealer or salesman without registration; failure to file required information with the Secretary of State; the making of a false statement in any application filed under the Act or representing

that a security has been in any way approved by the Secretary of State; engaging in any fraudulent practice in the sale of securities; obtaining money or property fraudulently; or the signing of any statement required by a provision of the Act with reasonable ground to know that any material representation thereon was false, all constitute violations of the law.

Violations are divided into two classes and maximum punishment for the more serious types of violation is possible imprisonment in the penitentiary for three years and the imposition of a $10,000.00 fine.

In any action involving violation of the registration provisions of the Illinois Securities Law of 1953, the burden of proving an exemption rests upon the party raising such defense. A certificate of compliance or noncompliance by the Secretary of State constitutes prima facie evidence of such compliance or noncompliance with the Securities Law.

1955 Amendments

Perhaps the most significant change in the Illinois Securities Law made by the amendments adopted by the Sixty-Ninth General Assembly required investment advisers to be registered as "investment advisers" after January 1, 1956, in much the same manner as securities dealers and salesmen are required to be registered.

The registration of investment advisers may be revoked or denied by the Secretary of State, after hearing, if such investment adviser "engages in an inequitable practice in the sale of securities or in any fraudulent business practice", "failed to account for any money or property, or has failed to deliver any security, to any person entitled thereto", or "has violated any provisions of the Act," among other reasons.

Another change made by the amendments substituted the term "face-amount certificate contract" for the term, "investment contract". The term "investment contract" was first defined as a security in the Illinois Securities Law in amendments adopted by the General Assembly in 1921.

Thereafter the term was specifically defined to mean "installment investment contracts, or installment investment certificates, or installment participation certificates, or installment investment bonds, or security of any kind, which contemplated that the issuer shall pay or deliver, or whereby the issuer agrees to pay or deliver either absolutely or conditionally, to the purchaser or holder of the contract, certificate, bond or like security, a sum of money at a future date, either with or without interest, in consideration of a payment or payments made or contemplated to be made by such purchaser or holder," in the amendments to the Illinois Securities Law adopted in February of 1932.

Thereafter the Federal Securities Act of 1933 used the term "investment contracts" and this term was given a much broader meaning, as contrasted to the term as defined in the Illinois Securities Law, for the Federal Courts have construed the term "investment contract" in the Federal Act so as to include the sale of an interest in any type of profit-seeking venture where the investor transfers his capital to the promoters and looks to the promoters for the success of his investment.

The Federal Investment Company Act defines "face amount certificate companies" to include those companies which issue securities defined as "investment contracts" in the Illinois Securities Law of 1919, as amended.

Therefore, it was deemed desirable to substitute the term "face amount certificate contracts" for "investment contracts" in the Illinois Securities Law of 1953 so that this term would be consistent with the use of this term in the Investment Company Act of 1940, likewise the term "investment contract" as used in Section 137.2A of The Illinois Securities Law of 1953 should now have the same scope as the term used in the Federal Securities Act of 1933.

The definition of "controlling person" was changed because such definition failed to include many persons who are actually in control of an "issuer" but who fail to meet the test set out in old Section 137.2D. The amended definition includes as a "controlling person" "any person selling a security, or group of persons acting in concert in the sale of a security, owning beneficially . . . either (i) 25% or more of the outstanding voting securities of the issuer of such securities where no other person owns or controls a greater percentage of such securities or (ii) such number of outstanding securities of the issuer of such securities as would enable such person or group of persons to elect a majority of the board of directors or other managing body of such issuer." In case of unincorporated issuers, the word "controlling person" shall mean "any person selling a security or group of persons acting in concert in the sale of securities who directly or indirectly control the activities of the issuer."

The term "controlling person" has always been a difficult term to define satisfactorily. It is difficult to draw a line so as to include persons actually in control of a corporation, without also including many persons not in a position of control and at the same time providing a rule sufficiently clear and certain as to guide the public as to its scope and extent. It is felt that this amendment will provide sufficient certainty so that the criticisms directed to the concept of "controlling person" un-

der the Federal Securities Act of 1933 will not be justified in regard to this definition.

Amendments to Exempt Securities

Section 137.3 of The Illinois Securities Law was amended so as to exempt from registration securities issued by "any savings and loan association incorporated under the laws of any state if such association is a member or stockholder of the Federal Savings and Loan Insurance Corporation" and securities issued by "any credit union approved and supervised by the Auditor of Public Accounts."

The "18 point type" required to be used in the legend "This Note is Secured By a Junior Mortgage" was changed to "12 point type or larger."

The word "corporation" was amended to read "person" and the word "trade" was added in Section 3H thereby broadening the exemption from registration of securities of not-for-profit issuers.

The requirement that negotiable promissory notes and drafts, bills of exchange and banker's acceptances be "given for full value and for the sole purpose of evidencing the obligation to pay, or extending the time of payment of, the purchase price of goods, wares or merchandise" was eliminated.

The popular exemption from registration for "subscriptions for, or sales of, shares of stock of a corporation prior to the incorporation thereof, under the laws of the United States or of any state, territory or possession thereof, or of the District of Columbia, if no commission or other remuneration is paid or given directly or indirectly for or on account of the subscription or sale, and if (1) the number of subscribers shall not exceed 25 or, in the alternative, (2) the amount raised by such subscriptions and sales does not exceed $25,000" was changed by placing this exemption under Section 4 of the law which relates to the sale of securities in "Exempt Transactions" and in addition, the alternative provision "if . . . (2) the amount raised by such subscriptions and sales does not exceed $25,000" was eliminated since this exemption appeared to be inconsistent with the general theory of a limited offering to a small number of people. It was thought that the proper test for exemption should be the number of subscribers and not the amount of money involved.

The exemption for securities issued by insurance companies was transposed from Section 3D and placed in a separate section 3M of The Illinois Securities Law of 1953. The exemption for sales of stock of cooperative associations was also taken out of the "Exempt Secu-

rities" section and placed in the "Exempt Transactions" section and in addition was broadened to exempt the issuance of patronage refunds and to permit the sale of securities by cooperative associations whose issued and outstanding stock and paid in surplus does not exceed $100,000, if the aggregate amount of such stock of such cooperative association held by any one natural person does not exceed $5,000; these provisions may be contrasted to the limiting figures of $50,000 and $1,000, respectively, as used in former Section 3M of The Illinois Securities Law of 1953.

Another new exemption was provided with respect to "employee-security-purchase plans" if the securities which are the subject of the employee-security-purchase plans would be exempt, pursuant to any other subsection of Section 137.3, from registration under Section 137.5." This exemption eliminates a vexing problem to the public where an issuer desires to sell its securities to its employees through such type of plan, generally providing for installment payments and generally at a favorable price, and where such securities would be exempt from registration because of being listed on a recognized exchange or because they were issued by a public utility or an insurance company, yet the plan would require registration under the Illinois Securities Law since the plan involves a security distinct and separate from the securities which are the subject of the plan.

Another new exemption relating to employees was added by Section 3O which exempts "securities issued by or pursuant to employee profit-sharing trusts or plans or employee pension trusts or plans."

The proponents of this amendment stressed the fact that most of these plans are qualified pursuant to the Internal Revenue Code and are generally issued on favorable terms to the employees; therefore, the additional requirement of registration was not necessary for the protection of the investor-employee.

Amendments to Exempt Transactions

The exemption for the sale, issuance or exchange by an issuer of its securities to or with its own stockholders or holders of evidences of indebtedness under Section 137.4B was changed to broaden this exemption to include the sale, issuance or exchange by an issuer of its securities to or with its own security holders by the deletion of the phrase "stockholders or holders of evidences of indebtedness." The term "security holders" encompasses a broader area than the terms "stockholders or holders of evidences of indebtedness," and includes holders of interests in unincorporated associations. At the same time, the following wording was added: "except to or with persons whc

are security holders solely by reason of holding transferable warrants, transferable options, or similar transferable rights of the issuer." The purpose of adding this wording was to prevent the use of this exemption from registration for offerings through transferable warrants or rights and to require the registration of such offerings.

Section 137.4F was considerably changed by clarifying and broadening the "trading" exemption in regard to securities listed in recognized financial manuals to require that profit and loss statements for a period of not less than two years be published in such financial manuals, as contrasted to the former requirement of a period of not less than three years. This change was made because most financial manuals publish only two years summaries of earnings.

In addition an important exemption was provided which extended the "trading" exemption under Section 137.4F to securities which are the subject of an application for authorization filed with and approved by the Secretary of State pursuant to such rules and regulations as the Secretary of State may prescribe. Such application must be accompanied by a filing fee of $100.00 and such approval expires two years after the date of the granting of such approval unless sooner terminated by the Secretary of State.

A clarifying change was set out in Section 137.4F(3) which provides that a dealer may act as agent or principal in the sale of securities on behalf of persons selling in transactions exempt pursuant to other subsections of Section 137.4 except that when a dealer acts on behalf of a person selling in transactions pursuant to Sub-Sections A, E, G, H, M, and N of Section 137.4 the registered dealer may act only as agent and not as principal.

A fee of $2.00 for the filing of a "report of sale" under Sections 137.4G and 137.4H is added by the new amendments.

An exemption is provided for "offers for sale or solicitations of offers to buy (but not the acceptance thereof)" of securities which are the subject of a pending application for registration under The Illinois Securities Law of 1953 and a pending registration statement filed under the Federal Securities Act. This change harmonizes the Illinois law with the Federal law in regard to "offers for sale."

Under the previous law, the term "sale" was defined so as not to include "the execution of orders for purchase of securities by a registered dealer, provided such dealer acts as agent for the purchaser, had made no solicitation of the order to purchase such security, has no direct interest in the sale or distribution of the security ordered, receives no commission, profit or other compensation, other than the

commissions involved in the purchase and sale of the security, and delivers to the purchaser written confirmation of the order which clearly itemizes his commission, profit or other compensation." This provision is now found in the "Exempt Transactions" section under new Section 4N.

Amendment to Service of Process

An important change was created in Section 137.10 of The Illinois Securities Law of 1953 which provides that "the sale or delivery of securities in Illinois, whether effected by mail or otherwise, by any person (unless such securities are exempt from registration under Section 3, or sold in transactions set out in Section 4, or registered prior to such sale under Sections 5, 6, or 7) shall be equivalent to and shall constitute an appointment by such person of the Secretary of State of Illinois, or his successors in office, to be the true and lawful attorney for such person upon whom may be served all lawful process in any action or proceeding against such person, arising out of the sale of such securities." This provision is similar to a provision in the Illinois Insurance Code and will permit an Illinois purchaser to obtain good service against non-resident defendant vendors. In addition, this provision will make the enforcement provisions of the law much more effective against out-of-state issuers and sellers.

Additional Amendments

Two changes were made in the escrow provisions of the Illinois Securities Law set out in Section 11(E). The first change allows securities to be deposited in escrow with banks or trust companies outside the State of Illinois. This is desirable because if more than one state imposes such an escrow on an interstate offering, there may be a conflict between state blue-sky laws, if each state requires the deposit be made in a bank in such state. The second change allows the substitution of comparable securities for securities escrowed. Thus, so long as adequate security is maintained in the escrow the securities may be substituted by comparable securities.

Section 137.11(H) was changed to provide that an order of prohibition or suspension of the sale of securities or a denial or revocation of the registration of securities may be entered if such securities are "being sold in violation of any of the provisions of Section 12." The former law provided that such an order may be entered only if the Secretary of State made findings that the sale of such securities would be fraudulent, inequitable or would work or tend to work a fraud or deceit. In addition, the duty of the Secretary of State to issue an administrative order is extended to provide that the Secretary

of State may by written order prohibit or suspend any person engaging in the business of selling securities as a dealer or salesman or from acting as an investment adviser without prior thereto being registered under the registration provisions of the law.

Another important change made in Section 137.12 concerning "Violations" adds Sub-Section I which provides that it is a violation of the Act for any person "to employ any device, scheme or artifice to defraud in the sale of any securities." This provision will allow the prosecution in a securities violation case to present the entire scheme to defraud and will not restrict the evidence to one or two specific instances where an individual was sold securities through fraudulent means. Quite a different impression is made on a jury if the prosecution's evidence is limited to the sale of securities to one or two individuals for a total of $500 or a thousand dollars each, than where the evidence shows that 300 or 400 persons were defrauded of $500 or a thousand dollars each and the total amount of money fraudulently obtained was in excess of $300,000 or $400,000.

Throughout the entire law fees were generally raised. All of the fees provided in The Illinois Securities Law of 1953 with one exception, were set at the same amount as the fees originally charged by the provisions of the 1919 Illinois Securities Law, as amended in 1921. The fee for the registration of securities was maintained at the rate of 1/20th of 1% but the maximum was changed to $500.00 instead of $300.00 as formerly, and the minimum was changed to $50.-00 instead of $25.00, as formerly. In addition, the fee for the registration of salesmen was raised from $5.00 to $10.00. The registration of investment fund shares was increased from $100.00 to $300.00. The registration fees in Illinois for securities and for the registration of dealers is now in line with most other states.

FEDERAL SECURITIES ACT OF 1933

Both the Federal Government and the various States have concurrent jurisdiction in many areas of Securities regulation and therefore a short discussion of Federal regulation is helpful in understanding Blue Sky law.

For a variety of reasons, spearheaded by the stock market crash of 1929, including a failure of the various states to properly enforce their "Blue Sky" laws, Congress adopted the Securities Act of 1933 (15 U.S.C.A. §§ 77a–77aa).

The Federal Securities Act of 1933 is primarily a "disclosure" statute rather than a "regulatory" Act similar to the "Blue Sky" laws. It

provides, briefly, for the filing of a registration statement, the use of a prospectus in connection with the sale of securities, and provides for civil and criminal penalties in the event of material misstatements or omissions.

Concurrent jurisdiction was expressly left to the States by section 18 of the Securities Act of 1933 which provides:

"Section 18. Nothing in this title shall affect the jurisdiction of the Securities Commission (or any agency or office performing like functions) of any State or Territory of the United States or the District of Columbia, over any security or any person."

Section 3 of the Federal Securities Act of 1933 exempts "any security which is part of an issue offered and sold only to persons resident within a single state or territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory".

"Definitions" as set out in the Securities Act of 1933 were strongly influenced by the "definitions" of similar terms in the "Blue Sky" laws. In turn, since the passage of the Securities Act of 1933, "definitions" in such Act have strongly influenced "definitions" in, and enforcement of, the "Blue Sky" laws. Practically all of the "definitions" in the Illinois Securities Law of 1953 were patterned on similar "definitions" in the Securities Act of 1933. The registration provisions and requirements of Sections 5, 6 & 7 of the Illinois Securities Law of 1953 are designed to coordinate with similar registration requirements of the Securities Act of 1933.

Rules and Regulations under the Illinois Securities Law of 1953 are substantially identical with, and taken from, similar Rules and Regulations under the Securities Act of 1933.

The public distribution of a large offering of securities throughout the United States involves compliance with the Securities Act of 1933 and statutes in 47 different states pertaining to "Blue Sky" law. Because of varying requirements of various "Blue Sky" laws, the problems of complying with such "Blue Sky" requirements are many, nevertheless, through cooperation of Federal and state securities administrators, issuers and their counsel, the job is accomplished many times over every month of the year. In addition, the various "Blue Sky" laws have developed a pattern to the extent that there is considerable "uniformity" both in the provisions of the various laws and in requirements for compliance.

Some "Blue Sky" laws are limited to antifraud provisions; some are limited to the requirement of the registration for licensing of persons engaging in the sale of securities; some are limited to provisions re-

quiring the registration of securities prior to sale; while still others provide for a combination of the foregoing regulatory measures. The Illinois Securities Law provides for all three types of regulatory devices and is termed by some authors as a "paternalistic" type of "Blue Sky" law.

Under the Federal system of government, each state is allowed to experiment and select the type of law which the state legislature believes is most suitable for the citizens of their state. It is, therefore, to be expected that "Blue Sky" laws vary from one extreme, such as Nevada which has no "Blue Sky" law, to another extreme, such as California which has a most comprehensive "paternalistic" type of "Blue Sky" law. Diversity in this respect is healthy. In addition, it should be pointed out that even with this "diversity" there is a considerable degree of conformity in the various "Blue Sky" laws in effect.

UNIFORM SECURITIES ACT

In 1929, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved a Uniform Sale of Securities Act.

After the passage of the Securities Act of 1933, a new problem of Federal-state coordination of "Blue Sky" laws and the Federal Securities Act was created. The 1929 Uniform Sale of Securities Act became obsolete, and in 1944 it was stricken from a list of the approved Acts of the National Conference of Commissioners on Uniform State Laws.

Additional attempts were made to draft a Uniform State Sale of Securities Act by the American Bar Association and the National Conference of Commissioners on Uniform State Laws.

In 1953, the National Conference of Commissioners on Uniform Laws requested Professor Louis Loss of the Harvard Law School to draft a Uniform Sale of Securities Act and in 1956, the Conference adopted the "Uniform Securities Act" substantially as drafted by Professor Louis Loss.

In preparing the "Uniform Securities Act" Professor Loss and his associate Edward Cowett spent approximately two years in preparation.

The Uniform Securities Act is divided into four parts having to do with (1) fraudulent practices, (2) registration of broker-dealers, agents and investment advisers, (3) registration of securities, and (4) general provisions relating to administration, enforcement and judicial review. By breaking the "Uniform Securities Act" into four parts, it was

thought that each state, according to its own legislative judgment, could adopt such provisions as it deemed desirable.

Some critics of the "Uniform Securities Act" have suggested that the new Act will tend to increase the amount of state regulation of the sale of securities, that it will fail in its objective of eliminating diversity, and in fact, will create additional diversity.

Thus far, the "Uniform Securities Act" has been adopted by nine states including Arkansas, Alabama, Oklahoma, Washington, Kentucky, Alaska, Virginia, Kansas and Hawaii. New Jersey and California legislatures are studying the Uniform Act. Time and experience will test the desirability of the adoption of the "Uniform Securities Act" in Illinois.

NORTH AMERICAN SECURITIES ADMINISTRATORS

In most states, the administration of the Blue Sky laws is in the hands of a securities commissioner or similar official. The administrators have associated themselves in an organization known as the North American Securities Administrators.

This organization has been able to make some notable accomplishments by the drafting of a uniform application form for the registration of securities, uniform regulations pertaining to open-end investment companies, and a statement of policy with respect to the distribution of identifying statements and preliminary prospectii.

The securities administrator in the State of Illinois is the Secretary of State, and the administration of the Illinois Securities Law of 1953 is delegated to and performed by the Securities Division of the Office of the Secretary of State. The Secretary of State and the Securities Commissioner, appointed by the Secretary of State, are members of the North American Securities Administrators.

EXPLANATION OF INTERPRETIVE COMMENTS AND NOTES

It is the purpose of the Interpretive Comments and Notes for each subsection of the Illinois Securities Law of 1953, set out following herein, to provide historical information of prior Illinois Securities Law, to indicate the effect of the present statutory provisions, to indicate the relation of the statutory provisions, where desirable, with the Federal Securities Act of 1933, and to comment with respect to whether or not a similar provision is found in the Uniform Securities Act.

INTERPRETIVE COMMENTS AND NOTES ON SECTIONS OF THE SECURITIES LAW OF 1953 AS AMENDED

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Analysis

§ 137.1 Short title

The former title of the 1919 Act was "The Illinois Securities Law".

§ 137.2 Definitions

Par. A

The definition of "securities" is very broad as was the definition of the same term in the 1919 Act. Not only are instruments "commonly

known as a security" included within the scope of the definition of "securities" but also such instruments as participation certificates, thrift certificates, syndicate interests, patronage stock, interests in oil drilling ventures, building and loan certificates, certain types of cemetery lot certificates, certain types of contracts of breeding and ranching of animals, as well as other types of investment contracts.

The term "investment contract" has been broadly defined by the Secretary of State under Rule 130 of General Rules and Regulations to include "any interest or participation in a contract, transaction, scheme, common enterprise, or profit seeking venture whereby the investor transfers capital to the promoter or promoters thereof or invest therein and looks to such promoter or promoters for the success of such venture". This definition is based upon judicial interpretation of the term "investment contract" by the United States Supreme Court in two landmark cases under the Federal Securities Act of 1933. (See Securities and Exchange Commission vs. W. J. Howey Co., 66 S.Ct. 1100, 328 U.S. 293, 90 L.Ed. 1244, 163 A.L.R. 1043 (1946); and Securities and Exchange Commission vs. C. M. Joiner Leasing Corporation, 64 S.Ct. 120, 320 U.S. 344, 88 L.Ed. 88 (1943).

The Secretary of State has also defined "fractional undivided interest" with reference to oil and gas leases, rights or royalties under Rule 131 of the General Rules & Regulations.

The definition of "securities" in the 1953 Act was taken from the Federal Securities Act of 1933.

The definition of "securities" in the 1953 Act is also very similar to the definition of the same term in the "Uniform Securities Act" (Sec. 401(*l*)) which definition was also patterned on the definition of the term in the Federal Securities Act of 1933 (15 U.S.C.A. § 77b(1)).

Par. B

The definition of "issuer" in the 1953 Law covers the same subject matter as the definition of the same term in the 1919 Law. (See Sec. 97(2) Chap. 121½ Ill.Rev.Stat.1949). In addition, the term "issuer" is further defined with respect to "equipment trust certificates" and with respect to "fractional interests in oil, gas or other mineral leases, rights or royalty".

The provision in the 1919 Law defining a "promoter" as an "issuer" has been deleted, since the term "controlling person" was added to the 1953 Law. Promoter is defined by the Secretary of State in Rule 405 of General Rules and Regulations under the Illinois Securities Law of 1953.

The definition of "issuer" in the 1953 Law is basically the same definition of the term in the Federal Securities Act of 1933 (15 U.S.C.A. § 77b(4)), and in the "Uniform Securities Act" (Sec. 401(g)).

Par. C

The definition of "person" was added by the 1953 Law there being no comparable definition in the 1919 Law.

While this definition follows closely the definition of the same term in the Federal Securities Act of 1933, it does not include the phrase "a government or political subdivision thereof". It is pointed out that most municipalities are municipal corporations and there appears to be no substantial importance to the fact that this phrase is left out of the 1953 Law.

The definition of this term in the Uniform Securities Act is copied verbatim from the Securities Act of 1933. (Sec. 401(i))

Par. D

The definition of "controlling person" is a new term to Illinois Law. The 1919 Law did not use the term and made no provision requiring compliance with the "filing" provisions of that law by a "controlling person" selling his or her securities.

The primary test for the determination of "control" as originally defined in 1953 was the element of "controlling, directly or indirectly, such number of outstanding securities of the issuer of such security as would enable such person, or group of persons, to elect a majority of the Board of Directors or other managing body of such issuer". This definition was too narrow in that it failed to include many persons actually in control of an issuer and was therefore amended, as above, in 1955.

The Rules and Regulations under the Federal Securities Act of 1933 define the term "control" to include the possession, direct or indirect of the power to direct the management of a person, whether through the ownership of voting securities, by contract, or otherwise. This concept is many times difficult to apply, and it is thought that the definition in the Illinois Law is clearer and more certain in application than the comparable definition under the Federal Securities Act of 1933.

The Uniform Securities Act does not use the concept of the term "controlling person" but rather uses the terms "issuer" and "non-issuer". The Uniform Securities Act makes it unlawful for any person to distribute or sell any security unless it is "registered" or "exempt". For a discussion of the concepts of "issuer" and "non-issuer" distributions and their relationship to the terms "issuer" and "controlling per-

son" under the Federal Securities Act of 1933 see "Official Comment to Section 305(i), Section 305(j) and Related Sections Referring to Non-Issuer Distributions" on Page 314 of "Blue Sky Law" by Loss & Cowett.

Par. E

The definition of the term "sale" under the 1953 Law is very broad and includes within its scope the "solicitation" of a sale as well as a "completed" sale. This definition substantially follows the definition of that term in the 1919 Act. (See Sec. 97.4, Chap. 121½ Ill.Rev.Stat. 1949).

A new provision in the definition of "sale" in the 1953 Law, relates to the use of "identifying statements" and "preliminary prospectus" as defined by Rules and Regulations of the Secretary of State, and exempts such from the application of the term "sale" provided there is a pending application for registration under Section 137.5 (See Rule 134 of General Rules and Regulations). The primary purpose of this exemption was to allow the distribution of identifying statements and preliminary propectii under the Federal Securities Act of 1933. Underwriters use such documents for the purpose of obtaining "indications of interest" in an offering and for the purpose of giving publicity to forthcoming offerings.

In addition, a phrase in the 1919 Law was taken out of the definition of "sale" and placed in Section 4 Par. N of the 1953 Law relating to "exempt transactions". The transaction referred to was defined in the last sentence of the definition of the term "sale" in the 1919 Law. It provided that such term would not include "the execution of orders for purchase of securities by licensed dealer or broker provided such dealer or broker acts as agent for the purchaser, has no direct interest in the sale or distribution of the security ordered, receives no commission, profit or other compensation, other than the commissions involved in the purchase and sale of the security, and delivers to the purchaser written confirmation of the order which clearly itemizes his commission, profit or other compensation". One of the important effects of this transfer was to place the burden of proof of the exemption, on the person claiming the exemption, for an "unsolicited sale" by virtue of the provision of Section 137.15, Par. A of the 1953 Law.

The definition of the term "sale" is substantially the same as the definition of that term in the Federal Securities Act of 1933 with the exception of the following phrase found in the Federal Securities Act of 1933: "The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving a holder of such security the

right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security."

The "Uniform Securities Act" defines the term "sale" so that it does not include "any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, or on a merger, consolidation, reclassification of securities, or sale of corporate assets and in consideration of the issuance of securities of another corporation". In addition, the Uniform Act excepts "any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash" from the definition of the term "sale". The definition of the term "sale" in the Illinois Law would include these transactions. (Sec. 401(j))

Par. F

The term "underwriter" was used in Section 100(1) of the 1919 Law but it was not defined. The definition of the term "underwriter" set out in the 1953 Law is patterned on definition of the same term in the Federal Securities Act of 1933. Rules 141, 142, and 405 define "commissions from underwriters", "participation" in Section 137.2F, and "principal underwriter" respectively.

The "Uniform Securities Act" does not define the term "underwriter".

Par. G

The definition of "dealer" in the 1953 Law is substantially the same as the definition of the terms "dealer" or "broker" in the 1919 Law.

It should be pointed out that the Illinois provision, requiring the registration of dealers, exempts from such requirement, persons engaged in selling securities in any or all of the exempt transactions set out under Section 4 of the law except subsection F. (See § 137.8 Par. A)

The term "dealer" is substantially patterned on the definition of the same term in the Federal Securities Act of 1933. While the definition of the term "broker-dealer" in the "Uniform Securities Act" follows the definition of the term "dealer" in the 1953 Law, the "Uniform Securities Act" excepts from the definition of that term the following:

"a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in this state." (Sec. 401 (c))

Par. H

The definition of the term "salesman" is substantially the same as the definition of the terms "solicitor" and "agent" used in the 1919 Law. It requires the registration of agents of "issuers" and "controlling persons" as well as "dealers."

The Federal Securities Act of 1933 does not define the term "agent" or "salesman."

The "Uniform Securities Act" definition of the term "agent" is very similar to the definition of the term "salesman" in the Illinois Law. Under the "Uniform Securities Act" an "agent" of an issuer is not required to be registered if no consideration or other remuneration is paid or given directly or indirectly for soliciting any person in the state.

Par. I

The requirement for the registration of "investment advisers", added to the Illinois Securities Law of 1953 by the amendments of 1955, was the most significant change created by the 1955 amendments. Abuses in the field of "investment advisers" created the need for such regulation. (See "Analysis of 1955 Amendments to the Illinois Securities Law", Illinois Bar Journal, August, 1955).

The definition of the term "investment adviser" was patterned on the definition of that term in the Federal Investment Company Act of 1940 (15 U.S.C.A. § 80b–2(a) (11)). At the present time, seventeen states require the registration of investment advisers.

The "Uniform Securities Act" definition of the term "investment adviser" is also based on the Federal Investment Company Act of 1940. (Sec. 401(f))

Par. J

The definition of the term "effective date" is based upon the use of that term under the Federal Securities Act of 1933 and this definition was not found in the 1919 Law nor is it found in the "Uniform Securities Act".

Par. K

The term "face amount certificate contract" was substituted for the use of the term "investment contract" in connection with the type of securities above described, by the 1955 Amendments. The purpose of this amendment was to insure that the term "investment contracts" would be given the broad meaning of that term as construed by the Federal Courts in the cases of Securities and Exchange Commission vs. C. M. Joiner Leasing Corporation, 64 S.Ct. 120, 320 U.S. 344, 88 L.Ed. 88 and Securities and Exchange Commission vs. W. J. Howey Co., 66 S.Ct. 1100, 328 U.S. 293, 90 L.Ed. 1244, 163 A.L.R. 1043.

Par. L

The definition of the term "investment fund shares" as originally adopted in the 1953 Law was patterned on the definition of the term "investment trust" as set out in Section 102(a) of "The Illinois Securities Law" of 1919, and included in the definition, a requirement that the assets be held by a custodian, bank or trust company having a capital and surplus of not less than one million dollars.

The amendment to this paragraph in 1955 considerably shortened the definition and broadly and simply defined the term. In addition, the definition was changed to provide that the term would not include persons not within the intent of the paragraph as the Secretary of State might designate by rules and regulations or order. Accordingly, the Secretary of State adopted Rule 143 defining the term "investment fund shares" based on the definition of an investment company under the Investment Company Act of 1940. The primary reason for not placing this definition in the law was the length of such definition, covering two and a half pages of type, and for the additional purpose of providing administrative flexibility that can be exercised in only one direction.

Par. M

This definition was a new term added by the 1953 Law. The "Uniform Securities Act" uses the term "administrator". (Sec. 401(a))

§ 137.3 Exempt securities

It should be noted that it is the purpose of this section to exempt "securities", as contrasted to "transactions", from the requirements of registration prior to sale in Illinois of all types of securities listed with the exception of "face amount certificate contracts". The effect of this exemption is that the securities listed in this section are exempt only from "registration" and are not exempt from other sanctions imposed by the law, such as penalties for being used in a "scheme to defraud".

Par. A

With certain changes herein noted, this subsection is based on former Section 99(1) of the 1919 Law. Whereas the 1919 Law exempted securities from registration that were "issued or guaranteed by a government, or by any state, province or political subdivision thereof," the exemption, set out in the above subsection, eliminates securities of all governments except that of the United States and its political subdivisions or public agencies.

A similar exemption is found in Section 3(a) (2) of the Federal Securities Act of 1933 (15 U.S.C.A. § 77c(a) (2)) and in Section 402(a) (1) of the Uniform Securities Act.

Par. B

The former 1919 Law provided in Section 99A(1) for an exemption from registration of securities "issued or guaranteed by a government, or by any state, province or political subdivision thereof" and therefore all of the additional qualifications in the subsection above are new requirements for exemption.

There is no comparable exemption from registration, of securities for "foreign governments" under the Federal Securities Act of 1933.

The Uniform Securities Act exempts from registration "securities issued or guaranteed" by Canada, any political subdivision thereof, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation of the issuer, or the guarantor. (Sec. 402(a) (2))

Par. C

The 1919 Law required securities of state banks, to qualify for exemption as Class "A" securities, to be issued by banks "whose principal place of business is located in a city having a population of at least 500,000 and whose capital represented by outstanding stock is at least $1-million and whose surplus and undivided profits aggre-

gate at least $1-million." Such requirement was eliminated by the 1953 Law. The provisions above extend the "banking securities" exemption to participations in a common trust fund administered under the "Common Trust Fund Act of Illinois". Illinois was the first state to recognize the need for such an exemption.

The Federal Securities Act of 1933 provides an exemption for securities "issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official." (15 U.S.C.A. § 77c(a) (2))

The Uniform Securities Act provides an exemption for securities "issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state." (Sec. 402(a) (3))

Par. D

The 1919 Law limited the exemption for the sale of securities of savings and loan associations, without registration requirements, to federal savings and loan associations and Illinois building and loan associations. The subsection above extends this exemption from registration to the securities of any savings and loan association incorporated under the laws of any state if the association is a member or stockholder of the Federal Savings and Loan Insurance Corporation. In addition the 1953 law extended the exemption to securities issued by credit unions approved and supervised by the Auditor of Public Accounts.

The Federal Securities Act of 1933 provides an exemption for securities issued by an institution substantially all of the business of which is confined to making loans to members. (15 U.S.C.A. § 77c(a) (5)).

The Uniform Securities Act exempts securities issued by any savings and loan association or building and loan association under the laws of any state regardless of whether or not such association is a member or stockholder of the Federal Savings and Loan Insurance Corporation.

In addition the Uniform Securities Act provides an exemption for securities issued by any federal credit union, or to any credit union supervised under the laws of the state in which the Uniform Securities Act is adopted.

Par. E

The comparable exemption in the 1919 Law for "public utilities" required not only that the securities issued and guaranteed by the public utility be subject to supervision or regulation in the issuance thereof, as required in the above subsection, but also required that such public utility must receive more than 50% of its total revenue from the operation of its public utility property to which the public utility had title and which property was required to be situated within the jurisdiction of the Commission having regulatory authority.

The Federal Securities Act of 1933 (15 U.S.C.A. § 77c(b)) has an exemption similar to the exemption in this subsection, for securities issued by a common or contract carrier, the issuance of which is subject to the provisions of Section 20a of the Interstate Commerce Act, as amended (49 U.S.C.A. § 20a).

The Uniform Securities Act provides an exemption for securities issued or guaranteed by a public utility which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935, (C) regulated in respect of its rates and charges by a government authority of the U. S. or any state, or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of Canada or any Canadian province. (See Sec. 402(a)(7))

Par. F

This exemption is an entirely new exemption not found in the 1919 Law.

No such specific exemption is found in the Federal Securities Act of 1933 nor in the Uniform Securities Act.

Par. G

The exemption from registration for "listed" securities in both the 1919 Law and the 1953 Law are limited to the Exchanges above set out. It should be noted that to come within the exemption from registration, not only must the securities be fully "listed" as contrasted to "listed for trading", but there is an additional requirement that trading must have occurred in such securities on the appropriate Exchange.

The 1919 Law set out an earnings test as a condition for exemption from registration of securities senior to securities "listed" on an Exchange. This "earnings" test was eliminated, and the only requirement is that such securities must be "senior, both as to dividends or interest and upon liquidation, to securities so listed."

The exemption for warrants and rights, expiring within sixty days after the date of issuance thereof, is a new exemption and added by the 1953 Law.

Under both the 1919 Law pursuant to Section 137.11(h) of the 1953 Law, the Secretary of State has the duty to suspend or prohibit the sale of any securities, including listed securities, if in his opinion the sale of such securities would be fraudulent, inequitable, or would work or tend to work a fraud or deceit.

It should be noted that the provision that this exemption does not pertain to investment fund shares being continually offered at prices determined in accordance with a prescribed formula is directed at "open-end" investment fund shares and not at "closed-end" investment funds. Therefore, securities of the latter type, if "listed" in accordance with this subsection, are exempt from registration.

The purpose of providing an exemption for "sixty day warrants and rights" to purchase listed securities was to enable issuers to make "shareholder offerings" by means of such warrants or rights, without requiring registration simply because of the use of such securities in connection with the distribution.

There is no exemption for "listed" securities under the Federal Securities Act of 1933.

The "listing" exemption in the Uniform Securities Act is similar to the above exemption except that there is no limitation of "sixty days" with respect to rights or warrants to purchase such "listed securities." (Sec. 402(a) (8))

Par. H

The exemption for securities issued by not-for-profit corporations varies from the similar exemption under the 1919 Law in two respects: "trade" has been added to the type of purposes set out in the exemption, and the requirement that "no part of the net earnings of which inures to the benefit of any private stockholder or member" has been added. The latter change was necessitated because of an opinion of the Attorney General of the State of Illinois, that a security of a charitable organization organized under the Not-For-Profit Act of Illinois was exempt even though its securities provided for some type of remuneration to the stockholders.

An exemption from registration for similar securities is contained in the Federal Securities Act of 1933.

The Uniform Securities Act provides an exemption similar to the above exemption except that it does not contain the requirement that

"no part of the net earnings may inure to the benefit of any private stockholder", and it also includes an exemption for securities issued by not-for-profit corporations organized and operated as a chamber of commerce or trade or professional association. Sec. 402(a) (9))

Par. I

This exemption is patterned on a similar exemption of the 1919 Law and has been extended to the acquisition of any type of property, real or personal, whereas the exemption in the 1919 Law was limited to the acquisition of "personal" property.

No such specific exemption is found in either the Federal Securities Act of 1933 or in the Uniform Securities Act.

Par. J

The provisions exempting bonds or notes not more than ten in number secured by a first mortgage and meeting the other requirements set out in the exemption, creates a new exemption for such securities not found in the 1919 Law; otherwise the provisions of this exemption are taken from a similar exemption in the 1919 Law.

No similar exemption is found in either the Federal Securities Act of 1933 or in the Uniform Securities Act.

Par. K

This exemption is a newly created exemption not found in the 1919 Law. Its purpose is to provide an exemption for the sale of a relatively small number of notes secured by a junior mortgage.

There is no comparable exemption in the Federal Securities Act of 1933, however, there is an exemption for the sale of securities by an issuer not involving any public offering, and for securities which are a part of an issue offered and sold only to persons resident within a single state, if the issuer is a resident and doing business within such state, or if a corporation, incorporated by and doing business within such state. (The Securities Act of 1933, respectively 15 U.S.C.A. §§ 77d(1) and 77c(11))

The Uniform Securities Act has an exemption, available to a limited number of persons not more than 10. (Sec. 402(b) (9))

Par. L

This exemption is based on a similar exemption found in the 1919 Law, however, the requirement in the 1919 Law that such securities be "given for full value and for the sole purpose of evidencing or

extending the time of payment of the price of goods, wares or merchandise purchased" has been eliminated.

In addition, the present law extends the exemption to issuance of "renewals" of such securities.

The exemption in the 1953 Law is based on a similar exemption for the same type of securities in the Federal Securities Act of 1933.

The exemption for such securities in the Uniform Securities Act is substantially the same as the exemption in the Illinois Law, including a requirement that the securities mature within nine months of the date of issuance. (Sec. 402(a) 10))

Par. M

This exemption is based on a similar exemption in the 1919 Law, with the addition that the requirement for "number of years of continuous operation" was increased from nine to ten years. The sale of securities of insurance companies is subject to the regulatory requirements of the Illinois Insurance Code. (Chap. 73, Ill.Rev.Stat. 1959)

There is no similar exemption for securities issued by insurance companies under the Federal Securities Act of 1933 except insofar as there is an exemption for "insurance or endowment policy or annuity contract or optional annuity contract" issued by insurance corporations. (15 U.S.C.A. § 77c (8))

The Uniform Securities Act exemption for securities issued by insurance companies is much broader than the exemption in the Illinois Law, and extends to securities issued by any insurance company organized under the laws of any state and authorized to do business in the state where the securities are to be sold. The exemption in the Uniform Securities Act for securities issued by insurance companies is expressly limited so that the exemption does not extend to "an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities." (Sec. 402(a) (5))

Par. N

This exemption is a new exemption added to the 1953 Law by an amendment in 1955. It has been the administrative interpretation of the Secretary of State, as well as the administrative interpretation of the Securities & Exchange Commission under the Federal Securities Act of 1933, that if employees are given the "voluntary" privilege to

"contribute" moneys for the purchase of securities of the employer that the sale of securities is involved, and as a result the securities must be registered, unless otherwise exempt. Since most employee-security-purchase sales are made pursuant to some type of plan involving subscriptions or a contract, another security is involved in addition to the security which is the subject of the purchase plan. Such additional security was not exempt from registration, even though the underlying security might be exempt by virtue of other provisions of Section 137.4, such as listing on a recognized stock exchange. The purpose of this exemption was to extend exemption from registration to any additional securities created by the plan and used in connection with the sale of the securities which would otherwise be exempt.

There is no comparable exemption for such offerings under the Federal Securities Act of 1933. The Securities & Exchange Commission has taken the position that employee's benefit plans which do not involve a "voluntary" participation by the employee or which do not involve a "contribution" by the employee do not involve the "sale" of a security and are therefore not subject to registration. The Secretary of State of Illinois has taken a similar position with respect to interpretations under the Illinois Securities Law of 1953.

The Uniform Securities Act provides an exemption for employee's stock purchase plan which is qualified by the requirement that the administrator of the securities law must be notified in writing within thirty days before the inception of the plan or within sixty days after the effective date of the act in the event that the plan was in effect on the effective date of the Act. (Sec. 402(a) (11))

Par. O

This subsection represents a new exemption to the 1953 Law, added by amendments adopted in 1955. No similar exemption was found in the 1919 Law. The Secretary of State of Illinois has adopted the administrative interpretation that the offering of employee's benefit plans involve the offer of a security if participation in the plan is "voluntary" with each employee and if the employee must "contribute" under the plan in order to participate. "Mandatory" participation or the lack of a requirement that the employee must "contribute" negate compliance with the securities law under the theory that no "sale" is involved.

The Federal Securities Act of 1933 has no comparable exemption for employees' profit sharing trusts or plans or employee pension trust or plans although they do have a special form for registration of such plans.

The Uniform Securities Act provides an exemption for employees' profit sharing or pension plans which is qualified by the requirement that the administrator of the securities law must be notified in writing thirty days before the inception of the plan or within sixty days after the effective date of the Act if the plan was in effect on the effective date of the Act. (Sec. 402(a) (11))

§ 137.4 Exempt transactions

With respect to the heading under Section 137.4, it should be noted that this section provides a "transaction" exemption from all registration requirements, applying to both face amount certificate contracts and investment fund shares, as well as other securities. This should be contrasted with the "securities" exemption from registration set out in Section 137.3, which does not apply to securities designated as "face amount certificate contracts."

Par. A

While the language of this section is somewhat similar to the transactions defined in Section 100(1) of "The Illinois Securities Law" of 1919, there is added the following phrase: "whether through a dealer or otherwise". The purpose of this additional wording was to insure that a bona fide owner could dispose of his securities "through a dealer" however, it should also be noted that the exemption in this subsection is for a vendor who is a "bona fide owner" of such securities and disposes of the same for his own account. In other words, this exemption standing alone does not apply to the sale by the dealer. A dealer must find another subsection under this Section, such as 137.4F to rely upon, for the resale of securities in the State of Illinois.

Deleted from the comparable definition under the 1919 Law was the phrase "promoter of the issuer". If a promoter is disposing of securities for his own account, and if such promoter is not a "controlling person", and if the sale is not for the benefit of the issuer, or underwriter, or controlling persons, then the sale transaction would be exempt under this subsection.

The Federal Securities Act of 1933 contains an exempt transaction for "transactions by any person other than an issuer, underwriter, or dealer" exempting such transactions from the registration requirements of the 1933 Act. (See 15 U.S.C.A. § 77d(1))

The "Uniform Securities Act" provides an exemption for "any isolated non-issuer transaction, whether effected through a broker-dealer or not". (Sec. 402(b) (1))

Par. B

The exempt transaction set out in this subsection was changed in several important respects from the comparable exemption under the 1919 Law. The exempt transaction in the 1919 Law was limited to a corporate issuer whereas the definition above is extended to any type of issuer. The 1919 Law "exempt transaction" was limited to the distribution to "stockholders" whereas the exempt transaction above is broader in that it is applicable to "security holders", which would include any type of security holder, however, the exemption is specifically denied to mere holders of transferable warrants, options or similar rights.

The 1919 Law prohibited the payment of any compensation in connection with the sale or distribution whereas the exempt transaction above allows the payment of a fee to underwriters "based on their undertaking to purchase any securities not purchased by security holders in connection with such sale or exchange". It should be noted that underwriters could not be paid a fee to solicit security holders to agree to the exchange, without losing the benefit of this exempt transaction. (See Rule 145 of General Rules and Regulations under Illinois Securities Law of 1953)

Added to this exemption by the 1953 Law is a transaction whereby securities are issued to a holder of convertible securities pursuant to a conversion privilege, provided the other conditions above set out are met. This exemption should be compared with the exemption set out in Section 137.2E relating to the definition of "sale" wherein a "privilege to convert a security into another security" is defined so that it is not within the ambit of the term "sale".

It is important to remember that the exchange of one security for another of the same corporation, under the Illinois Securities Law of 1953, other than under the terms of this subsection is a "sale" under the Law, and the security must be registered under the Law, unless the security is exempt, or there is some other exempt transaction available.

This subsection, as originally enacted in 1953, was limited to an exchange of securities by an issuer to or with its own stockholders or holders of evidence of indebtedness, among other limitations, but it was amended in 1955 to extend the securities which could be exchanged, from stock and evidences of indebtedness, to any type of security, except transferable warrants, transferable options or similar transferable rights.

Section 3(a) (9) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a) (9)) provides a similar exemption for the exchange of securities by

an issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

The Uniform Securities Act provides an exemption for any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holders in the state, or (b) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days. (Sec. 402(b) 11) It can readily be seen that the Uniform Act is much broader in scope with respect to this type of exempt transaction than the Illinois Law.

Par. C

The exempt transaction for the sale of securities to certain types of primarily institutional buyers was broadened from the 1919 Law to include the following additional purchasers: savings institutions, pension funds or trusts, employee's profit sharing trust, and any trust, in respect of which a bank or trust company is a trustee or co-trustee.

There is no comparable exemption for such transactions under the Federal Securities Act of 1933, however, there is an exemption under the Federal Securities Act for sales "not involving any public offering" which ordinarily covers the placement of relatively large block of securities with institutional buyers. (15 U.S.C.A. § 77d(1))

The Uniform Securities Act has a similar exemption to the exempt transaction set out in this subsection. (Sec. 402(b) 8) It should be noted that exemption in the Uniform Act does not extend to "corporations", as such, as does the subsection in the Illinois Law, above set out.

Par. D

This subsection in the 1953 Law, created a brand new "exempt transaction" classification specifically limited to the sale of "oil and gas" securities. The sole purpose for differentiating "oil and gas" securities with other types of securities was to add an additional type of buyer defined as a "association or trader buying or selling fractional undivided interest in oil, gas or other mineral rights, in frequent operations, for its or his own account rather than for the account of customers, to such extent that it or he may be said to be engaged in such activities as a trade

or business". This wording was taken from a definition in the Internal Revenue Code.

There is no comparable exempt transaction under the Federal Securities Act although there is an exemption for the sale of securities in transactions by an issuer not involving any public offering. (Federal Securities Act of 1933, 15 U.S.C.A. § 77d(1))

The definition of "exempt transactions" for sales to institutional buyers under the Uniform Securities Act would cover oil and gas securities as well as other types of securities except that it does not include either "corporations" or "traders" under the classification of persons who may be sold securities in such an exempt transaction. (Sec. 402(b) (8))

Par. E

The exempt transaction for the sale of securities by certain classes of persons, as set out in this subsection, is primarily based upon a similar exemption under the 1919 Law with the exception of the addition of the transaction of the sale of securities by a pledgee of securities, pledged for a bona fide debt and not for the purpose of avoiding the provisions of the Act. It should also be pointed out that the sale of securities in the exempt transactions, described in this subsection, would probably also be exempt from registration under the terms of the exempt transaction set out in Section 137.4A.

The Federal Securities Act of 1933 provides an exemption for "transactions by any person other than an issuer, underwriter or dealer" and the sale of securities by the sellers outlined in this subsection would usually fall within this exemption from registration under the Federal Securities Act of 1933. (The Federal Securities Act of 1933, 15 U.S. C.A. § 77d(1))

The Uniform Securities Act provides a similar exempt transaction for sales by all of the persons specified in this subsection including bona fide pledgees. (Sec. 402(b) (6, 7))

Par. F

This subsection provides an exemption from registration for the sale of securities by dealers and is commonly referred to as the "trading" exemption.

While this exemption for the sale by dealers is primarily based upon a comparable exemption in the 1919 Act, the language has been considerably clarified and the exemption has been broken down into subparagraphs making the exemption much more understandable. (See Former Section 100(7) of Chap. 121½ Ill.Rev.Stat.1951)

The present subsection, as amended in 1955, makes it clear that the exemption is for a "registered" dealer, that the dealer may act either as principal or agent, and that the exempt transaction does not extend to the sale of face amount certificate contracts or investment fund shares.

The 1919 Law required publication in a recognized manual of securities of a balance sheet as of a date not more than fifteen months prior to the date of sale, and profit and loss statements for a period of not less than three years next to prior to the date of such balance sheet.

An important and entirely new "trading" exemption is provided by subsection (2) by the amendments of 1955, whereby a "trading" exemption may be obtained for securities which do not meet the requirements of paragraph (1) of this subsection. The Secretary of State has prepared Form 4f2 for the use of applicants in qualifying securities for such exemption. Since this exemption was added in 1955, approximately twenty securities have been authorized for trading under the terms of this subsection. Most of these securities have been issued by seasoned foreign issuers, or by issuers whose securities have been previously registered under Section 137.5 of the Illinois Securities Law of 1953, or would otherwise be eligible for registration under such Section 137.5.

The amendments of 1955 also clarified and broadened this "trading" exemption by expressly allowing a dealer to act as agent in the sale of securities for sellers acting in other "exempt transactions" under Section 4, other than Section B.

The provisions in the last paragraph of this subsection extending the exemption to a dealer when acting with respect to issuers, pursuant to subsections C, D, G, H, L or M of Section 4, is entirely new and was added by the Amendments of 1955.

The Secretary of State has adopted Rule 147 listing seven different manuals of securities meeting the requirements of the term "a recognized manual of securities" as used in this subsection.

The Securities Act of 1933 provides an exemption from registration for transactions by a dealer (including an underwriter, no longer acting as an underwriter in respect of the security involved in such transaction), except transactions taking place prior to the expiration of 40 days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter and transactions in a security as to which a registration has been filed taking place prior to the expiration of 40 days after the effective date of such registration statement or prior to the expiration of 40 days after the first

date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later, etc.". (Federal Securities Act of 1933, 15 U.S.C.A. § 77d(1))

The "Uniform Securities Act" has a somewhat similar "trading" exemption which in addition requires that the names of the issuers, officers and directors be set out in a recognized securities manual, and the exemption is extended to any securities with a fixed maturity, or a fixed interest or dividend provision, if there has been no default during the current fiscal year, or within the preceding fiscal years, in the payment of principal, interest or dividends on the security. (Sec. 402(b) (2))

Par. G

One of the primary objections to the "exempt transactions" section of the 1919 Law was that there was no provision for a small offering exemption comparable to the "private offering" exemption under the Federal Securities Act of 1933. A lack of such exemption was a considerable deterrent to small business financing. Since there has been considerable litigation and much difference of opinion as to what constitutes a "private offering" this terminology was not used in the Illinois Securities Law of 1953, but rather the above subsection was created to provide an exemption for relatively limited offerings primarily by small businesses. The purpose of this exemption was to strike a balance between protection of the public and freedom of action by the sellers of securities which would be broad enough to help small businesses in relatively small financing transactions yet narrow enough to limit abuses.

It should be noted that this is a qualified exemption, requiring the filing of report, within a statutory period of thirty days, and that this subsection does not apply to "oil and gas" securities which are specifically covered in Subsection H of this section. Two questions of interpretation have arisen under this subsection. Does the limitation of sales "to not more than 15 persons" include sales outside of Illinois as well as those within Illinois? It is argued that the Illinois Securities Law has no extraterritorial effect and, therefore, sales "outside of Illinois" should not be included. The Attorney General of Illinois has issued an opinion stating that the limitation of sales to "not more than 15 persons" applies to sales everywhere.

The second question involves whether or not "offers" must be counted as "sales" for purposes of determining the availability of this exemption. Under the usual definition of the term sale, in Section 137.2E, "offers" constitute "sales," but because of the provisions relating to information

to be filed in "reports of sale" it can be logically argued that "sales" means completed "sales" and does not include mere "offers" where no consideration is paid.

It should also be noted that the exemption in this subsection may be combined with the sale of "exempt securities" under Section 3 and with the sale of securities in "exempt transactions" under other subsections of this section. For example, a corporation might sell preorganization subscriptions to 25 subscribers, incorporate, and then sell its stock to 15 additional persons under this subsection, thereby distributing its securities to 40 persons within a relatively short period of time. This exemption is quite extensively used and in the five year period from 1955 to 1959 sales in excess of $69,000,000, were made pursuant to this subsection.

The filing fee of $2.00 was added by the 1955 Amendments. The Secretary of State supplies copies of Form 4-G used for filing "reports of sale".

As previously referred to above, the Securities Act of 1933 provides an exemption for transactions by an issuer not involving any public offering. (Federal Securities Act of 1933, 15 U.S.C.A. § 77d(1)) Since the decision of the U. S. Supreme Court in Securities and Exchange Commission vs. Ralston Purina Co. (1953), 73 S.Ct. 981, 346 U.S. 119, 97 L.Ed. 1494, there has been considerable reluctance to rely upon this exemption from registration because of the difficulty in applying the test as to what constitutes a "private offering" under tests laid down in the Ralston Purina decision. Previous to this decision, the SEC had a rule of thumb that ordinarily the sale of securities to not more than 25 persons would be considered a "private offering".

The Uniform Securities Act provides an exemption for a limited offering to not more than ten persons during any period of twelve consecutive months provided the seller reasonably believes that all the buyers in the state are purchasing for investment and provided no commission or other remuneration was given for soliciting any buyer in the state. (Sec. 402(b) (9))

Par. H

This subsection, like subsection G above, was added to facilitate the limited financing of oil and gas transactions without the usual requirements of registration under the Illinois Securities Law of 1933. There was no comparable exemption in the 1919 Law.

"Oil and gas" securities are separately provided for in this subsection so that special treatment could be given to "oil and gas leases"

and an alternative exemption could be given to unincorporated issuers, as an alternate to the sale to "not more than 15 persons". The alternative exemption was provided by permitting the sale of oil and gas securities to any number of persons, provided the sales price does not exceed $25,000 within any period of twelve consecutive months, in addition to certain other qualifications. This alternative "$25,000 exemption" was added in the 1953 Law when there was a similar alternative exemption available to the sale of stock by a corporation under subsection M of this section. In 1955 this alternative "$25,000 exemption" for corporations in subsection M was deleted, but not so the exemption in this subsection.

As was true in the case of the exemption set out in subsection G above, the justification for this exemption is based upon the striking of the balance between the protection of the public and the imposition of restrictions on the seller of such securities.

The same problems of interpretation, that have arisen under subsection G above, apply to this subsection. An opinion of the Attorney General has stated that the exemption in this subsection for sales "to not more than 15 persons" includes sales everywhere and is not limited to sales to 15 persons within the State of Illinois.

There is a difference of opinion as to whether or not the "sales" referred to in this subsection means "completed" sales as contrasted to "offers for sale." Ordinarily, the term "sale" includes "offers" but because of the language of this subsection relative to information to be filed in "reports of sale", it is argued that the context of the use of the term "sale" in this subsection means "completed" sales as contrasted to mere offers.

The filing fee of $2.00 was added by the 1955 Amendments. The Secretary of State supplies Form 4-H used for filing "reports of sale".

The Securities Act of 1933 contains a comparable exemption for "transaction by an issuer not involving any public offering." (Securities Act of 1933, 15 U.S.C.A. § 77d(1))

The Uniform Securities Act provides an exemption for an offer directed to not more than ten persons in the state during any period of twelve consecutive months. If the seller reasonably believes that all of the buyers in the state are purchasing for investment and no commission is paid or given directly or indirectly for soliciting any prospective buyer in the state. (Sec. 402(b) (9))

Par. I

The exemption created by this subsection is entirely new with the Illinois Securities Law of 1953, there being no exemption for such

transactions under "The Securities Law" of 1919. It should be kept in mind that the consolidation or merger must be "statutory". A consolidation takes place when two or more corporations consolidate into a new corporation, and a merger takes place when two or more corporations merge into one of such corporations.

It should also be emphasized that this exemption does not apply to a refinancing, reorganization, or recapitalization of a single corporation. An exchange of securities in connection with a refinancing, reorganization or recapitalization of a single corporation involves the sale of a security if one security is exchanged for another type of security and ordinarily such a sale of securities will require registration under Section 5, if not exempt under Section 137.4B or 137.4J.

The Securities & Exchange Commission has adopted Rule 133, under the Securities Act of 1933, which defines a plan or agreement for a statutory merger or consolidation, as not involving a "sale" under the circumstances set out in said rule.

The definition of the term "sale" in the Uniform Securities Act excludes from the definition of that term "any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation". (Sec. 401(j))

Par. J

The exemption in this subsection follows the requirements of a similar exemption under Section 100(6) of the 1919 Law, and in addition, adds the qualification that the plan of reorganization, recapitalization, readjustment or composition be "approved by a court of competent jurisdiction".

This exemption is based on a similar exemption in The Securities Act of 1933. (Federal Securities Act of 1933, 15 U.S.C.A. § 77c(a)(10))

The Uniform Securities Act provides an exemption for "any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interest, or partly in such exchange and partly for cash". (Sec. 401(j))

Par. K

The exemption for the issuance of securities, under the terms of this subsection, by cooperative associations organized exclusively for agri-

cultural, producer, marketing, purchasing, or consumer purposes is entirely new to the Illinois Law with the enactment of such section in 1953. At least seventeen other states provide special treatment for securities issued by cooperatives. In view of the nature of cooperatives and in view of the limitations with respect to "purposes" set out in this subsection, and the requirement that no commission be paid in connection with the sale of such securities, and the other conditions of this subsection, the General Assembly decided that the sale of such securities was appropriate for special consideration.

The Federal Securities Act of 1933 has no comparable exemption. The Uniform Securities Act has no such exemption for cooperatives although the draftsmen provide an appropriate section for the insertion of such an exemption relating to cooperatives.

Par. L

The Federal Securities Act of 1933 pursuant to Section 10 relating to the requirements of a prospectus and Section 2(3) relating to the definition of the term "sale" as distinguished from the term "offer to buy", and the Rules and Regulations adopted under the said Act, permit the solicitation of "offers to buy", but not the acceptance thereof, of securities which are the subject of a pending registration statement filed under The Federal Securities Act. The purpose of this subsection above is to coordinate the Illinois Securities Law of 1953 with the Federal Securities Law so that such "offers to buy" may be solicited in the state of Illinois in compliance with Law.

The Uniform Securities Act has a similar exemption for "any offer (but not a sale) of a security for which registration statements have been filed under the Act and under the Securities Act of 1933". (Sec. 401(j))

Par. M

This exemption is primarily based upon a similar exemption found in the 1919 Law. As this exemption was originally enacted in the Illinois Securities Law of 1953, it was set out in the "exempt securities" section rather than in the "exempt transactions" section. In addition, it provided for an alternative exemption for the sale of securities under the conditions of this subsection provided "the amount raised by such subscriptions and sales does not exceed $25,000".

The 1955 amendments to the 1953 Law correctly transferred this exemption to the "exempt transactions" section and eliminated the alternative exemption, above referred to. The 1919 Law also limited this exemption to subscriptions for the stock of Illinois corporations and this

subsection extends the exemption to subscriptions for the stock of corporations to be formed under the laws of the United States or any state, territory or possession of the U. S. as well as the District of Columbia.

It is also important to note that probably there is no limitation to the number of "offers" that may be made under this subsection provided the subscribers do not exceed twenty-five. It should be kept in mind that the exemption in this subsection is no longer available after incorporation.

The Federal Securities Act of 1933 provides an exemption for "transactions by an issuer not involving any public offering" and also an exemption for "any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory." (15 U.S.C.A. § 77c(11))

The Uniform Securities Act provides an exemption for the sale of preorganization subscriptions if no commission is paid for soliciting any prospective subscriber and the number of subscribers does not exceed ten and no payment is made by any subscriber. Under this exemption as soon as the corporation is incorporated, then payment can be made by the preorganization subscribers. (Sec. 402(b) (10))

Par. N

While this subsection is patterned on a similar exemption contained in the definition of the term "sale" in the 1919 Law and also in the definition of the term "sale" in the original enactment of the Illinois Securities Law of 1953, the placing of this exemption in Section 137.4 was done by the amendments adopted in 1955. The importance of the effect of taking this exemption out of the definition of the term "sale" and placing it in the "exempt transactions" section lies in the fact that Section 137.15 of the Law places the burden of proving an exemption upon the party raising such a defense. Therefore, the burden of proving an exemption under this Section is placed on the dealer making the sale.

The Federal Securities Act of 1933 contains a similar exemption in the "exempt transactions" section of that law which states: "broker's transactions, executed upon customer's orders on any Exchange or in the open or counter market, but not the solicitation of such orders", are exempt from the registration requirements of Section 5.

The Uniform Securities Act also places this exemption in the "exempt transactions" section of such Act and such exemption from

registration provides: "any non-issuer transaction effected by or through a registered broker—dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker—dealer for a specified period;". (Sec. 402(b) (3))

§ 137.5 Registration of securities

Under the Illinois Securities Law of 1919, there were four classes of "filing" or "registration" of securities. Investment contracts, now called face amount certificate contracts under the 1953 Law, and investment fund shares were each registered under separate sections of the Act; securities issued by persons meeting certain earnings requirements defined in Section 101 were "registered" by filing information required under former Section 102 of the 1919 Law; all other securities were known as Class "D" and were "filed" under Section 104 of the 1919 Law.

The registration of face amount certificate contracts and investment fund shares are discussed under appropriate sections hereinafter.

It was very important under the 1919 Law to be classified as Class "C" securities because of certain onerous requirements for "filing" as Class "D" securities.

The "earnings test" for Class "C" securities was particularly difficult to meet for growing expanding companies. Securities being concurrently registered under the Securities Act of 1933 and meeting the requirements of Class "C" securities could be registered by filing a relatively short application form with the Secretary of State. Financial statements were required to be certified only to the extent that such financial data was required to be certified under the Federal Securities Act of 1933 in the event of concurrent registration under the Federal Securities Act. In the event that securities in Class "C" were not concurrently registered with the SEC then "filing" requirements included certified financial statements prepared as of a date within sixty days of the date of "filing".

In the event that the securities to be "filed" were Class "D" securities grave problems arose. The legend "These Are Speculative Securities" was required on all selling literature. Such a requirement was not at all palatable to many seasoned but growing companies such as installment finance companies.

Financial statements were required to be certified and prepared as of a date within sixty days of "filing". This provision made registration impossible for many companies, whose securities were also the subject of registration under the Federal Securities Act of 1933 since certified financial statements could be used which were prepared in certain instances, as of a date as long as fifteen months prior to registration under the Federal Securities Act of 1933.

A statement of surplus was required from the inception of the issuer to the date of the financial statements filed.

In the event that securities were to be offered at a price in excess of "book value" then a statement of the "book value" was required in the prospectus.

An inventory and an appraisal of the assets of the issuer were required of all applications for "filing" of Class "D" securities, however, the Secretary of State could waive the filing of same, in the case of issuers of the securities who had been in the business in which they were then engaged, for a period of not less than five years preceding the date of the filing with the Secretary of State, and if they had a net profit for any two of such five years.

In addition, if any Class "D" securities were issued for intangible assets it was required that such securities be delivered in escrow to a bank or trust company designated by the Secretary of State under an Escrow Agreement providing that the owners of such securities could not in the case of dissolution or insolvency participate in the assets of the company until after the owners of all other securities had been paid in full, and further providing that such Escrow Agreement would remain in full force until the securities met the earnings standard established for Class "C" securities or until the issuer was dissolved. The Secretary of State could waive this escrow requirement if the issuer had been in business for a period of not less than five years and had had a net profit in any two of such five years.

An issuer desiring to have its securities sold in Illinois was required to qualify under the Business Corporation Act by Section 134 of the 1919 Act.

While the 1919 Law required 25 copies of all documents required for a "filing" or a "registration" of Class "C" or Class "D" securities there was no requirement that the seller of the securities furnish such documents or a prospectus to the purchaser of securities.

All of the above provisions and requirements in the 1919 Law were changed by the "Illinois Securities Law of 1953".

In determining whether or not registration is required under this section above and further assuming that face amount certificate contracts or investment company shares are not involved, the following process of elimination should be reviewed.

First, is there a "security" involved? Second, is there a "sale" involved? Third, is the security "exempt" from registration requirements by virtue of Section 137.3? Fourth, will the sale of the security be made in an "exempt transaction", as defined in Section 137.4, and therefore exempt from registration?

Assuming that the security must be registered and it is not a face amount certificate contract or an investment fund share, then there are three possible avenues of registration under this section.

All three methods of registration under this section are patterned on the Federal Securities Act of 1933, the Rules and Regulations thereunder, and the forms of registration adopted by the SEC. The Secretary of State has adopted 29 registration forms, most of which were copied, with minor changes, from similar forms promulgated by the SEC. (See "appendix as to Forms" in back of Rules and Regulations under Illinois Securities Law of 1953).

The provisions of of Registration by Notification and Registration by Description require a concurrent application for registration under the Federal Securities Act of 1933, and the registration documents required by the Federal Securities Act of 1933, with certain minor additional information, will also meet the requirements for Registration by Qualification under the Illinois Securities Law of 1953.

The difference between Registration by Notification and Registration by Description, as a practical matter, are relatively unimportant. Under both types of registration, the applicant usually has available and files the application with supporting documents within one to three weeks prior to the effective date of the registration under the Federal Securities Act of 1933.

If the securities to be sold have been issued by an issuer meeting the earnings requirements set out in the section on Registration by Notification, the registrant need only submit two copies of the Prospectus as initially filed under the Securities Act of 1933, and four copies of all subsequent amendments and supplements thereof, along with a consent to service of process together with the proper application form promulgated by the Secretary of State. Since the Prospectus, as initially filed with the SEC, is bound in the Federal S–1 Registration Statement and the amended Prospectus is likewise contained in the amended S–1's, the primary relief afforded to a registrant by "Notification" is

an exemption from filing the exhibits to the registration statement, as compared to the alternative method of Registration by Description.

The term "Registration by Notification" is somewhat misleading since an affirmative act of the Secretary of State is required before "Registration by Notification" becomes effective. The statute also provides that the Secretary of State must register securities by notification no later than 24 hours after the receipt of the final Prospectus or within 24 hours after receipt of telegraphic notice that the registration pertaining to such securities has become effective under the Federal Securities Act of 1933. Ordinarily under either Registration by Notification or Registration by Description the Secretary of State is immediately notified of the effective date under the Federal Securities Act of 1933, and the Secretary of State promptly registers such securities under the appropriate subsection of this section.

Under Registration by Description the applicant is required to file with the Secretary of State, an application together with two copies of the registration statement filed under the Federal Securities Act together with the exhibits listed under said subsection. An examination fee of $50 is required with respect to the registration of securities by "Description". Such examination fee is not required under Registration by Notification or Registration by Qualification.

Registration by Qualification is practically identical with registration requirements under the Federal Securities Act of 1933, with certain minor additional items of information required. This type of registration is primarily used for the offering of securities of less than $300,000 in amount, pursuant to an exemption under Regulation A of the Federal Securities Act of 1933, or in connection with the offering of securities of Illinois corporations to be sold only to residents of the State of Illinois wherein the issuer is doing business. In addition, this section is also sometimes used for the registration of securities which have, more than thirty days prior to filing with the Secretary of State, been registered under the Federal Securities Act of 1933.

When the 1953 Law was originally adopted, there was some early criticism concerning the imposition of registration requirements, on the types of issues mentioned above, which are comparable to the registration requirements under the Federal Securities Act of 1933. The answer to this criticism was that the requirements of registration on a small business are considerably less than those required of a larger more complex business where the facts required to make a full disclosure are considerably more detailed. In addition, the more than twenty years experience of the SEC in the formulation of rules and

regulations pertaining to registration requirements constitute the best thinking in the field of securities regulation for the protection of investors by disclosure.

Under Registration by Qualification, there are certain minor differences as to information required compared to a registration under the Federal Securities Act of 1933. The names and addresses of all of the issuers, officers and directors earning in excess of $10,000 annually together with the amount of their remuneration must be furnished. SEC requirements are presently based on a figure of $30,000 per year.

Under Registration by Qualification, there must be furnished the names and addresses of all persons owning 10% or more of any class of "equity" securities while under the Federal Securities Act of 1933 such information must be furnished as to the holders of 10% of any class of securities, equity or otherwise.

Financial statements prepared as of a date within 120 days prior to the date of submitting the application meet the requirements of Registration by Qualification whereas registration under the Federal Securities Act of 1933 requires financial statements as of a date within ninety days prior to the date of submitting the application.

Registration by Qualification requires the submission of "an analysis (which need not be certified to by independent public accountants and which may be in narrative form if desired by the applicant) of all surplus accounts of the issuer for a period beginning on a date not less than eight years prior to the date of the certified balance sheet required", whereas under the Federal Securities Act of 1933 the period covered by such statement is generally three years plus any interim period for which financial statements are furnished.

Registration Problems

Underwriting commissions in connection with the sale of securities registered under this section are limited to "15% of the initial offering price of such security price to the public". While usually the term "underwriting commission" means the remuneration, commonly known as a spread, received by a dealer as a consequence of reselling securities bought at a price below the offering price of such securities, Rule 148(a) of the General Rules & Regulations under the Illinois Securities Law of 1953 defines an underwriting "commissions" to include the following:

"whenever the issuer, the parent of such issuer, or a controlling person in respect of such issuer has, at or about the date or proposed date of an offering or proposed offering of securities of such issuer, issued, sold, transferred, or assigned to an underwriter or underwriters of such securities, securities of the same class as those offered or proposed to be offered at a price which is less than the public offering price or proposed public offering price of such securities, the difference between the aggregate price in which said securities were acquired by the underwriters and the aggregate value of such securities at the public offering price or proposed public offering price shall be presumed to be commissions, remunerations or discounts paid in connection with the underwriting of the securities offered or proposed to be offered."

Nevertheless, the Secretary of State has adopted Rule 150(a) 1(iii) allowing the issuance of stock purchase options or warrants to managing underwriters in connection with securities offerings of relatively small companies in the promotional stage where other conditions in the Rule are met.

In addition, the Secretary of State has adopted special rules for the determination of underwriting commissions in offerings to shareholders where there is a so-called "standby" agreement by underwriters to purchase all securities not subscribed for by the shareholders. Such special provision is found in Rule 148(b) of the General Rules and Regulations.

The Secretary of State has also adopted Rule 180 relative to the requirement of appraisals to be furnished as an exhibit in every application for the registration of securities of an issuer which has not been engaged in the business in which it is engaged for five years or has not had a profit in each of the last three years. Such appraisal, if required, must be prepared by disinterested qualified persons designated by the Secretary of State and bear a dollar valuation as to the assets of the issuer prepared as of the date not more than 120 days prior to the date filed with the Secretary of State.

If the securities to be registered are issued by an issuer in the developmental or promotional stage, Rule 150(a) (2) requires the promoters of the issuer to have a 15% equity investment, or the offering will be deemed inequitable and, therefore, not eligible for registration.

It should also be pointed out that any of the following persons may submit an application for the registration of securities: an

issuer, a controlling person, or a registered dealer. If the applicant is not a registered dealer and not qualified to do business in the State of Illinois under the Business Corporation Act, then a consent to service of process must be filed as an exhibit to the application.

The amendments of 1955 to the Illinois Securities Law of 1953 raised the minimum and maximum registration fees from $25.00 to $50.00 and from $300.00 to $500.00, respectively.

If the issuer of the securities, which are the subject of an application for Registration by Description or Qualification, has issued securities for intangible assets or needs a specified amount of money from the sale of such securities to carry out its proposed use of funds then the Secretary of State will probably require an escrow of securities, or proceeds of sale, as the case may be, under the provisions of Section 137.11 D or E. For a discussion of these problems see Historical and Practice Notes following each subsection.

It must constantly be remembered that the Secretary of State has the duty to refuse to register any securities where there are conditions making the sale of such securities inequitable or if the sale would tend to work a fraud or deceit.

The "Uniform Securities Act", similar to the section above, provides for three types of registration: Registration by Notification, Coordination and Qualification.

Under Registration by Notification, where the issuer meets the earnings requirements of such section, the registration becomes automatically effective at 3:00 Eastern Standard Time in the afternoon of the second full business day after the filing of the registration statement, unless a proceeding to delay such registration has been taken by the administrator.

Registration by Coordination is practically identical with Registration by Description under the Illinois Securities Law of 1953.

Likewise, Registration by Qualification under the "Uniform Securities Act" is practically identical with Registration by Qualification under the Illinois Law.

§ 137.6 Face amount certificate contracts

The above section is primarily based on former Section 101(a) of the 1919 Law. Face amount certificate contracts, formerly called "investment contracts" prior to amendment in 1955 under both the 1919 Law and the 1953 Law as adopted are issued by a special type of investment company which is also required to be registered under

the Investment Company Act of 1940 administered by the SEC. One of the unique features relating to the registration of "face amount certificate contracts" requires the issuer to maintain a deposit with the State of Illinois of securities representing debt obligations of the kind in which life insurance companies organized under the laws of Illinois are permitted to invest their funds, in an amount having a fair market value of not less than $100,000 and at no time less than the current contract liability on all such face amount certificate contracts held by persons residing in Illinois.

Under the Investment Company Act of 1940 and its Rules and Regulations, issuers of face amount certificate contracts must maintain a deposit of securities equal to their liability under the terms of the face amount certificate contracts in a central depository designated by the issuer, except with respect to face amount certificate contracts which the issuer is required under a state law to maintain a similar deposit against such contract liability with the State.

The Secretary of State is given authority under the above section to recognize a deposit of securities by the issuer of "face amount certificate contracts" if such deposit is maintained in a qualified institution pursuant to the Investment Company Act of 1940 and the rules and regulations thereunder, in lieu of, and in substitution for the deposit otherwise required under this section. Since the administration of the deposit requirements under this section are expensive and burdensome and since the central depository, recognized and provided for under the Investment Company Act of 1940, is supervised by the U. S. Securities & Exchange Commission, it was considered desirable by the General Assembly to provide this discretionary authority to the Secretary of State. Presently only three companies have securities registered under this section.

An issuer of face amount certificate contracts is constantly offering such securities to the public and therefore many of the provisions of the above section are directed to filing of supplementary and amendatory statements.

Investment companies must be registered under the Federal Investment Company Act of 1940 and the Federal Securities Act of 1933.

Under the Uniform Securities Act, investment companies will primarily register under coordination procedures and there is also a special section allowing amendments to be filed by investment companies, because of their continuous offerings of securities. (Sec. 303 and Sec. 305k)

§ 137.7 Investment fund shares

This section is primarily based on provisions relating to the registration of "investment funds" under the 1919 Law. The whole design of this section relates to the registration of so-called "open-end" investment companies. Open-end investment companies have authority to continually offer their shares to the public and also stand ready, with certain qualifications, to redeem any shares offered for sale by their shareholders.

Since all of the provisions of this section are directed to "open-end" investment companies, there is a question as to the proper section for registration of "closed-end" investment companies, the shares of which are traded like the securities of any other corporation. At the present time Form 7S is prescribed under this section for registration of shares of "closed-end" investment companies.

Most of the provisions of this section are directed toward requirements for the filing of supplementary and amendatory information since "open-end" investment companies are continually offering to sell and to buy their own securities. Before filing an application for registration of investment fund shares, attention should be given to Rule C of the General Rules & Regulations under the Illinois Securities Law of 1953, particularly with regard to expense ratios, distribution charges and dual or interlocking directors.

Two important conditions of registration are set out in subsection D above. The first relates to the capital, surplus and undivided profits of trustees or custodians of securities of investment companies. The second relates to the limitation on sales charges or "sales load" as commonly referred to by members of the securities industry. Stated in reverse from the language of the statute the "sales load" cannot exceed 10% of the "sales price" of the securities. For certain inequitable types of commissions, see Group Securities, Inc. v. Carpentier, 19 Ill.App.2d 513, 154 N.E.2d 837.

Investment companies must be registered under the Federal Investment Company Act of 1940 and their securities registered under the Securities Act of 1933.

Under the Uniform Securities Act, investment companies will primarily register under "registration by coordination" and will file periodic amendments under a special section. (Sec. 303 and Sec. 305k)

§ 137.8 Registration of dealers, salesmen and investment advisers

Par. A

With the exception of the requirement that "investment advisers" be registered with the Secretary of State on and after January 1, 1956, the provisions of this subsection are substantially based on former Section 118 of "The Illinois Securities Law" of 1919.

It should be noted that this section does not apply to "issuers" or "controlling persons", nevertheless, it should be kept in mind that if such persons employ an agent in the sale of their securities, it is necessary for them to register such agents as "salesmen".

It should also be mentioned that officers, directors, partners, or proprietors of dealers are not required to be separately registered, although such persons must file a ten year occupational statement with the application for registration of the dealer.

Dealers who engage in the sale of "exempt securities" such as municipal bonds must be registered as "dealers".

If a person's transactions are exclusively limited to the sale of securities in "transactions" enumerated in Section 137.4A, B, C, D, E, G, H, I, J, K, L, M or N, then such person is not required to be registered as a dealer or salesman under the Act.

The requirement that "investment advisers" be registered was added by amendments in 1955 to the "Illinois Securities Law of 1953". Misleading advertising, the use of "investment advisers" as "fronts" for the sale of fraudulent securities, and other abuses has led to an increasing amount of state regulation of the business of acting as an "investment adviser".

The Investment Advisers Act of 1940 administered by the Securities & Exchange Commission, in addition to sixteen state statutes on the subject, also regulates investment advisers.

The Uniform Securities Act (Sec. 201(c)) provides for the registration of "investment advisers" on much the same basis as the "Illinois Securities Law of 1953".

Par. B

The information required to be filed by an applicant for registration as a dealer is based on the requirements of the 1919 Law. The filing fee of $25.00 for the registration of a dealer was increased to $50.00 by the amendments of 1955.

A registrant is under a duty to report any "materially adverse" changes in the information required to be supplied with the application for registration or reregistration of a dealer. Under the 1919 Law, any "change in facts" was required to be reported within thirty days to the Secretary of State.

Registrants are required to file certified financial statements each year within forty-five days after the date as of which financial statements are prepared. A dealer has the discretion to select the date as of which the financial statements are to be prepared and therefore he will select that date most convenient to him. Under the 1919 Law, the registration of all dealers expired on June 30th of each year, unless a different date was selected by the dealer, and financial statements prepared as of May 30th of each year, were required to be filed with the Secretary of State.

Under rules adopted by the Secretary of State a dealer is not permitted to allow his "aggregate indebtedness" to exceed 2000% of his "net capital". The terms "aggregate indebtedness" and "net capital" are specifically defined in Rule D 1 B of the General Rules and Regulations under the Illinois Securities Law of 1953.

Dealers are required to maintain adequate books and records showing all transactions for a period of three years. Dealers may request permission from the Secretary of State to maintain most of the records required in an office outside of the State of Illinois, as an accommodation to the convenience of the dealer. Nevertheless, certain of the records including "blotters", confirmations, and memorandums of brokerage orders are required to be maintained in an office in Illinois. Rules pertaining to dealers are found in Rule D of the General Rules & Regulations under the Illinois Securities Law of 1953.

The Federal Securities Act of 1933 has no requirements as to the registration of dealers and salesmen, since such requirements are in the Federal Securities and Exchange Act of 1934.

The registration provisions and financial requirements imposed on dealers by the Federal Securities and Exchange Act of 1934 and by the "Uniform Securities Act" are substantially similar to the requirements under the Illinois Securities Law of 1953. (Sec. 201 of Uniform Securities Act and Section 15 of the Securities and Exchange Act of 1934, 15 U.S.C.A. § 78*o*)

Par. C

The provisions requiring the registration of "salesmen", formerly termed "solicitors and agents" under the 1919 Law, are generally the

same as required by the 1919 Law. Issuers and controlling persons must register "salesmen" as well as dealers in the event that they are using an agent, other than a registered dealer or an officer or director of the company, to sell securities.

Registration fees were increased from $5.00 to $10.00 with respect to salesmen by the amendments of 1955.

Individual salesmen are not required to be registered under the Federal Securities & Exchange Act of 1934.

The Uniform Securities Act provides for the registration of "agents" on much the same basis as the Illinois Law requires as to "salesmen". (Sec. 20)

Par. D

The requirements for the registration of an investment adviser, adopted in the 1955 amendments to the Illinois Securities Law of 1953, are patterned on the registration requirements for "investment advisers" under the Investment Advisers Act of 1940. Dealers who furnish investment advice are exempt from an additional registration as investment advisers.

The Secretary of State has adopted Rule E of the General Rules & Regulations under the Illinois Securities Law of 1953, relating to investment advisers. By such Rule, the Secretary of State requires the principal executive officer, or a manager, or employee of the applicant to take a written examination before the applicant may be registered as an investment adviser.

Investment advisers are required to file annually financial statements, and their advertising is subject to strict regulation. In addition, fees charged by investment advisers must be reduced to writing and communicated to each client.

The U. S. Government requires the registration of investment advisers under the Investment Advisers Act of 1940.

The Uniform Securities Act provides for the registration of investment advisers similar to the requirements of the Illinois Law. (Sec. 201(c))

Par. E

The basis for denying, suspending or revoking the registration of a dealer, salesmen or investment adviser are grouped in this one subsection. Formerly, provisions for the revocation of the registration of a dealer or broker or a solicitor and agent, under the 1919 Law were contained in two different sections which were largely repetitious.

It should be noted that in the event that an officer, director, partner, or proprietor of a dealer commits an improper act, or otherwise becomes subject to denial, suspension, or revocation proceedings, the Secretary of State must proceed against the registration of the "dealer" and not against the individual officer, director, partner or proprietor. For example, if one officer, out of fifteen officers and directors of a dealer, "engages in an inequitable practice", action of revocation must be taken directly against the registration of the dealer, since there is no individual "registration" of such officer.

While the basés for action by the Secretary of State to deny, suspend or revoke the registration of a dealer, salesmen or investment adviser are set out in the statute and are fairly clear, it should be pointed out that the phrase "engaged in any inequitable practice in the sale of securities or in any fraudulent business practice" is broad enough to cover most practices of an unethical type. This general language will stand the test of time in that as business standards are raised, former practices which at one time might have been considered proper, but later improper in the light of changing standards, will be covered.

The Uniform Securities Act has similar grounds for administrative action including the following standard, "has engaged in dishonest or unethical practices in the securities business". In addition, the Uniform Act provides a qualification affording an administrator the right to deny registration to a person "not qualified on the basis of such factors as training, experience, and a knowledge of the securities business". (Sec. 204(a))

Par. G

The 1919 Law, provided that each "registration" would expire on the 30th day of June in each year, although it also permitted "registrations" to be renewed from year to year at any time prior to the expiration of such "registration". It is important to remember that the "registration" expires annually and that it is not a continuous "registration", such as the registration of a dealer under the Securities Exchange Act of 1934.

It is also pointed out that regardless of when a salesman is registered during the year, the registration of such salesman expires on the next succeeding anniversary expiration date of the registration of the dealer. The application of renewal for a dealer provides space for the names of the salesmen whose registrations are to be renewed by the dealer.

Under the 1919 Law, the renewal application for a dealer was required to be accompanied by a financial statement. In the 1953 Law, the

financial statement is not required to be filed with the renewal application statement but instead is filed within 45 days after the date as of which the financial statements are prepared, and which date is selected by the dealer.

The Uniform Securities Act provides for the annual reregistration of dealers and agents on the anniversary date of registration. (Sec. 201 (d))

§ 137.9 Advertising

This section is based on former Section 116 of the 1919 Law. It should be pointed out that the wording of this section makes it unlawful for any "person" to circulate, publish or broadcast any advertising matter, unless exempt pertaining to the sale of any security unless approved by the Secretary of State. This language includes not only issuers, controlling persons or other vendors, but also includes newspapers, radio and television stations.

The Uniform Securities Act exempts advertising with respect to newspapers and magazines and radio and television programs when the newspapers and magazines are published outside the State and when the radio or television program is originated outside of the State. (Sec. 414(e))

§ 137.10 Service of process

Par. (A)

This section is based on former Section 111 of the "Illinois Securities Law" of 1919. In the event that a corporation applicant for registration as a dealer, or an "issuer" corporate applicant for registration of securities, is incorporated under the laws of the State of IIllinois, or is qualified to do business under the laws of the State of Illinois, then a consent to service of process is not required under the appropriate registration provisions of the law. Otherwise, the corporation making application for registration as a dealer must qualify under the Business Corporation Act, and the corporate "issuer" must file a consent to service of process.

In the event that application for the registration of securities is made by a registered dealer, then the issuer is not required to file a consent to service of process with the State of Illinois.

The Uniform Securities Act has similar treatment requiring the filing of "consent to service of process" by applicants for registration and like-

wise exempting "issuers" from such requirement, where the application for registration is filed by a registered dealer. (Sec. 414(g))

Par. (B)

While the provisions of this subsection are an innovation to Illinois Securities Law, they are not an innovation to Illinois Law in general. The provisions of this subsection were patterned on Section 123 of the Illinois Insurance Code (Ill.Rev.Stat.1953, Chap. 73 Par. 735) and former Section 20a of the 1919 "Motor Vehicle Law, now Section 9—301 of the "Illinois Motor Vehicle Law (Ill.Rev.Stat.1959, Chap. 95½, Section 9—301).

In general, the constitutionality of "substituted service of process" in connection with the sale of intangible contracts, such as insurance policies and securities, from outside the state has been determined by the U. S. Supreme Court in the case of Travelers Health Ass'n vs. Com. of Va., 70 S.Ct. 927, 339 U.S. 643, 93 L.Ed. 1154. Other cases upholding "substituted service of process" include the State of Washington ex rel. Bond & Goodwin & Tucker vs. Superior Court, 53 S.Ct. 624, 289 U.S. 361, 77 L.Ed. 1256, 89 A.L.R. 653; Silva vs. Crombie & Co., 44 P.2d 719, 39 N.M. 240; Boise Flying Service, Inc. vs. General Motors Acceptance Corporation, 36 P.2d 813, 55 Idaho 5.

A particular case in point involving the validity of "substituted service of process" is the case of Wilentz vs. Edwards, 1944, 36 Atl.2d 423, 134 N.J.Eq. 522, in which it was decided that service by mail, outside the State of New Jersey, in a proceeding to restrain a nonresident dealer from engaging in the securities business within the State of New Jersey, was sufficient to authorize the entry of an order of restraint. The court relied upon the proposition that if a state has the right to prohibit an act, its grace in permitting an act may be attended by the imposition of conditions on the exercise of the act.

The general test of the validity of "substituted service of process" appears to be whether or not a particular defendant has established sufficient "minimum contracts" within the state so that the maintenance of a suit by "substituted service of process" does not offend traditional notions of fair play and substantial justice. (International Shoe Co. vs. State of Wash., Office of Unemployment Compensation and Placement, 66 S.Ct. 154, 326 U.S. 310, 90 L.Ed. 95, 161 A.L.R. 1057). The solicitation of a person in Illinois in connection with the sale of securities either by mail or by telephone and the sale of such securities to the Illinois person should be sufficient "transaction of business" to support substituted service of process under the above subsection of the Illinois Securities Law of 1953.

It should be pointed out that this subsection makes no provision for the Secretary of State to notify the person being served by registered mail or any provision for the plaintiff in the case, to service such notice. Nevertheless, the Secretary of State has adopted Rule 151 providing for "service" by registered mail on the defendant, by the plaintiff, and the filing of an affidavit of such mailing with the Secretary of State. The omission of the subsection to require additional notice of "service on the Secretary of State" by a mailing to the defendant probably does not make the subsection obnoxious to "due process" since the voluntary act of making the sale or delivery of the security constitutes acceptance of the terms of this subsection.

In addition to the above subsection with regard to substituted service of process, attention should also be given to Section 17 of the Illinois Civil Practice Act which provides "that any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from "the transaction of any business within this state, or the commission of a tortious act within this state."

Section 17 of the Civil Practice Act has been held constitutional by the Illinois Supreme Court in the case of Nelson vs. Miller, 11 Ill.2d 378, 143 N.E.2d 673, decided in 1957.

It has also been held that the phrase "transaction of any business" is not necessarily equivalent to the phrase "doing business" within the meaning of the Business Corporation Act. Therefore the sale or delivery of securities in Illinois in most transactions would constitute the "transaction of business" within the terms of Section 17 of the Civil Practice Act. In determining "due process" requirements as to substituted "service of process", the courts have generally applied the test as to whether or not there have been sufficient "minimum contacts" by the defendant within the state so that the maintenance of a suit by substituted service of process does not offend traditional notions of fair play and substantial justice. (See International Shoe Co. vs. State of Wash., Office of Unemployment Compensation and Placement, 66 S.Ct. 154, 326 U.S. 310, 90 L.Ed. 95, 161 A.L.R. 1057).

In addition, if securities were sold through fraudulent misrepresentations, and omissions to state material facts, by a seller in another state, communicated to a purchaser in the State of Illinois, or if the securities were otherwise sold in violation of the law, such constitutes a "tortious act" which would also be sufficient to support substituted service of process under Section 17 of the Illinois Civil Practice Act.

The above subsection as well as Section 17 of the Civil Practice Act applies to both citizens and residents of the State of Illinois as well as those persons outside the State of Illinois. Under Section 17, service of process may be made "by personally serving the summons upon the defendant outside the state".

The Uniform Securities Act provides a similar section for substituted service of process, by service on the administrator and the sending of notice to the defendant, which is limited to nonresidents and to persons where personal jurisdiction cannot be obtained in that state. (Sec. 414 (h))

§ 137.11 Duties and powers of the Secretary of State

Par. (A)

Although the 1919 Law provided that the Secretary of State would have the power to make needful rules and regulations in Section 25 (Section 120 Illinois Revised Statutes 1949) the provisions of the above subsection were taken, with minor variations, from Section 19(a) of the Securities Act of 1933. (15 U.S.C.A. § 77s(a))

It should be emphasized that the rule making power of the Secretary of State under this law is very broad and approaches the limit of constitutional delegation of power by the legislature to the executive.

The last sentence of this section is most important to those who have occasion to rely upon rules or regulations adopted by the Secretary of State. Recently, there have been several cases construing the application of a similar provision under the Securities Exchange Act of 1934 with reference to a Rule of the S.E.C. pertaining to an exemption, for the acquisition of stock under stock option agreements, from the provisions of Section 16(b) of the Securities and Exchange Act of 1934. See Greene vs. Dietz, 247 F.2d 689 and Perlman vs. Timberlake, 172 F.Supp. 246.

The Uniform Securities Act also provides broad rule making power to the administrator. (Sec. 412)

Par. (B)

This section is based on similar powers set out in Sections 101 and 112 of the 1919 Law. In "The Illinois Securities Law" of 1919, Section 112 provided that the Secretary of State could refuse to file documents pertaining to the sale of securities in Class "C" or Class "D" if "in the opinion of the Secretary of State (such securities would) work or tend to work a fraud on the purchaser of such securities". The con-

stitutionality of such a provision was passed upon in the case of Stewart vs. Brady, 133 N.E. 310, 300 Ill. 425, and found valid.

Similar broad grants of power to the administrator were contained in the Securities Laws of Ohio, South Dakota and Michigan and held Constitutional in the cases of Hall vs. Geiger-Jones Co., 37 S.Ct. 217, 242 U.S. 539, 61 L.Ed. 480; Merrick vs. N. W. Halsey & Co., 37 S.Ct. 227, 242 U.S. 568, 61 L.Ed. 498; and Caldwell vs. Sioux Falls Stock Yards Co., 37 S.Ct. 224, 242 U.S. 559, 61 L.Ed. 493.

The Federal Securities Act provides in Section 17 that it is unlawful for any person in the sale of securities by means of transportation or communication in interstate commerce or by the use of the mails to directly or indirectly employ any device to defraud or to obtain money by means of any untrue statement of a material fact, or any omission to state a material fact, or to engage in any transaction or course of business, which would operate as a fraud or deceit upon the purchaser.

The Uniform Securities Act provides that the administrator may suspend or revoke the sale of securities if he finds that such order would be in the public interest and that, among other reasons, the offering would work or tend to work a fraud upon the purchaser. It should be noted that this power is not as broad as the powers delegated to the Secretary of State which include the right to refuse to register securities if "there are conditions affecting the soundness of the security so that the sale of such securities would be inequitable". (Sec. 306(a))

Par. (C)

The provisions of this subsection are taken from former Section 106 of "The Illinois Securities Law" of 1919.

While the powers in this Section are used relatively infrequently, the fact that such powers are available to the Secretary of State have considerable weight with applicants for registration. Because of the time problem in the registration of offerings, the suggestion by the Office of the Secretary of State, that such powers might be used is sufficient to cause most applicants to ask permission to withdraw their application. Also, such provisions have a deterrent effect with respect to applicants for registration where there are factors involved that the applicant would rather not have investigated.

The Securities and Exchange Commission has the power under Section 19(b) to make all investigations which, in the opinion of the Commission, are necessary and proper. The S.E.C. has no power to require that the applicant bear the cost of such investigation. The S.E.C. does have a staff of engineers and other types of experts available to it in the

performance of the examination duties imposed on the S.E.C. with respect to the requirement of a "full disclosure" of all material facts in connection with an offering of securities.

The Uniform Securities Act provides that the administrator, in his discretion, may make public or private investigations, however, there are no provisions taxing the cost of such investigation to the applicant. (Sec. 407)

Par. (D)

The provisions of the subsection are patterned on former Section 106 of "The Illinois Securities Law" of 1919. This subsection is designed to protect the public by requiring that an issuer, attempting to raise funds of a definite amount for a specified purpose and where a certain minimum amount of funds is necessary to go ahead with the project, obtain such amount of funds before the issuer of the securities will be entitled to the use of the proceeds of the sale of securities. This power is very beneficial to investors and is a good example of a power effectively used by states in the administration of "Blue Sky" laws and which power is not available to the S.E.C. under the Federal Securities Act of 1933.

When the "escrow of funds" provision is imposed by the Secretary of State, such escrow remains in effect until all of the funds of a specified amount are obtained and at that time the funds are turned over to the sellers of the securities. In the alternative, if the necessary funds are not obtained from the sale of the securities, the escrow is terminated and all of the funds are returned to the purchasers. It should be noted that there is no provision for the payment of commissions to the sellers of the securities in the event that the sellers are not successful in selling a sufficient amount of the securities to obtain the necessary minimum funds to proceed with the project. Some states have a similar "escrow of funds" requirement but do not require that all of the proceeds be deposited in the escrow, and only require a specified percentage, usually 85%, of such proceeds to be deposited in the escrow. In such type of escrow, the sellers are able to retain their commission, usually 15%, regardless of whether or not the sales program is successful in raising the minimum funds necessary.

The Federal Securities Act of 1933 gives no such power, to require escrows, to the Securities and Exchange Commission.

The Uniform Securities Act provides that the administrator may require, as a condition of registration, that the proceeds from the sale of a registered security be impounded until the issuer receives a specified amount. This power is not available to the administrator under the

Uniform Securities Act in the event of registration by notification. (Sec. 302(g))

Par. (E)

The provisions of this subsection are taken from former Section 107 of "The Illinois Securities Law" of 1919. This subsection allows the Secretary of State to require securities issued for intangible assets to be escrowed under the terms and conditions of this subsection. Since securities deposited in such an escrow agreement have little marketable value, the requirements of such an escrow of securities imposes a substantial test on the faith, of those receiving such securities for intangibles, as to the success of the enterprise. Usually, the persons receiving securities in exchange for intangibles are "controlling persons". States having "escrow of securities" requirements, such as Illinois, are usually by-passed, if the securities may be sold in other states and sufficient funds raised to meet financing needs.

This power of the Secretary of State is a most important one in the protection of the public from being imposed upon in connection with usually speculative offerings.

The amendments to this subsection, adopted in 1955, allow "comparable security" to be substituted for the securities escrowed. Very little use, if any, has been made of this provision by depositors.

It should be pointed out that the power of requiring an escrow of securities under this subsection is not available in connection with securities "registered by notification".

The Federal Securities Act of 1933 gives no such power to escrow securities to the Securities and Exchange Commission. This is another example of a power available under a "regulatory" Blue Sky statute as distinguished from a "full disclosure" statute such as the Federal Securities Act of 1933.

The uniform Securities Act has a similar provision allowing an administrator to require an escrow of securities if the securities were issued within the past three years for a consideration substantially different from the public offering price, or to any person for a consideration other than cash.

It should be pointed out that the requirement of an escrow under the Uniform Securities Act is discretionary with the administrator and likewise the requirement is discretionary with the Secretary of State under the Illinois Securities Law of 1953. (Sec. 302(g))

Par. (F)

This subsection is based on former provisions of Sections 106 and 118h of "The Illinois Securities Law of 1919".

The Federal Securities Act of 1933 provides that the S.E.C. may make all investigations considered necessary and proper and to subpoena witnesses, and take evidence in connection with such investigations.

The Uniform Securities Act also has a general provision allowing the administrator to make any and all necessary investigations. (Sec. 407)

Par. (G)

Former Sections 106 and 118h of "The Illinois Securities Law" of 1919 provided similar powers to the Secretary of State as those set out in the above subsection.

In addition, the wording of the first sentence of this subsection is based on Section 19(b) of the Securities Act of 1933. The constitutionality of a comparable delegation of power authorizing the S.E.C. to require the production of documents relative to an inquiry and to the enforcement of subpoenas issued by the S.E.C. was upheld in the case of Penfield Co. of California v. Securities and Exchange Commission, 1944, 143 F.2d 746, 154 A.L.R. 1027.

In addition, it has been held under the Securities Act of 1933 that the scope of investigation, under the powers similar to those granted to the Secretary of State in this subsection, should not be limited narrowly by questions of propriety and that such investigations are not constrained by technical rules as to admissibility of evidence. (Woolley v. U. S., 1938, 97 F.2d 258; Securities and Exchange Commission v. Bourbon Sales Corporation, 1942, 47 F.Supp. 70.)

Another important power granted to the Secretary of State in the enforcement of the Illinois Securities Law of 1953 is found in the last sentence of this subsection giving the Secretary of State the right to take depositions of witnesses residing in or outside the State of Illinois in the manner provided in civil actions under the laws of Illinois.

The Uniform Securities Act also provides the administrator with the duty to make public or private investigations, with the power to subpoena witnesses and to require the production of books and records and the power to enforce such powers, through the courts, all in similar fashion to the subsection above. In addition, the Uniform Securities Act grants immunity to witnesses compelled to give testimony if such wit-

nesses have claimed their constitutional privilege against self-incrimination.

It should be noted that where testimony is compelled under a state process, and the individual involved has claimed his privilege against self-incrimination, that such compulsion of testimony under state process does not grant immunity from Federal prosecution. (Feldman v. U. S., 64 S.Ct. 1082, 322 U.S. 40, 487, 88 L.Ed. 1408, 154 A.L.R. 982; Dunham v. Ottinger, 243 N.Y. 423.) It must also be kept in mind that it may be unconstitutional to compel testimony under state process under the State of Illinois Constitution, if there is no guarantee against a resulting Federal prosecution. For similar cases, see the case of People v. Den Uyl, 318 Mich. 645, 2 A.L.R.2d 625. (Sec. 407(d))

Par. (H)

Provisions of this subsection have historical relationship to Sections 101, 112 and 119(2). The power of the Secretary of State to take action under this subsection is available regardless of whether or not an application for registration has been filed with the Secretary of State.

Here again is an example of a power conferred upon the Secretary of State in a "regulatory" statute which is not conferred upon the administrators of a "disclosure" type of statute. The terms "inequitable" or "tend to work a fraud or deceit" are very broad. Standards thus imposed approach the limits of constitutional delegation of powers although such standards have been upheld as constitutional. (See Hall v. Geiger-Jones Co., 37 S.Ct. 217, 242 U.S. 539, 61 L.Ed. 480, 1917.)

The provisions in the subsection extending the power of the Secretary of State to prohibit persons from engaging in the business of acting as an investment adviser without compliance with registration requirements, was added by the amendments of 1955.

The Federal Securities Act of 1933 has no similar powers to prohibit the sale of securities where the sale might be "inequitable" although the S.E.C. does have the power to issue Stop Orders in connection with registration statements which in the opinion of the S.E.C. do not meet the requirements of the Securities Act of 1933. (See Section 8(b) and (d) of the Securities Act of 1933, 15 U.S.C.A. § 77h(b) and (d).)

The Uniform Securities Act gives the administrator the power to deny, suspend or revoke a registration of securities as well as the registration of a dealer or agent or investment adviser, however, such administrative power for issuance of orders of denial, suspension, or prohibition does not extend to persons other than those already "registered" or in the process of making application for "registration". Thus, under the

Uniform Securities Act, if a person refuses to comply with the law requiring registration, then it is necessary for the administrator to go into court for the purpose of obtaining an injunction against such violation or to start criminal prosecution. (Sec. 408, 409)

The Illinois Securities Law of 1953 gives the Secretary of State the power to move directly in an administrative proceeding against persons refusing to comply with the law.

Par. (I)

This subsection provides for "due process" for respondents in administrative proceedings by requiring notice, and an opportunity for hearing, before the taking of final action by the Secretary of State. It is based on former Section 119(2) of "The Illinois Securities Law" of 1919.

The General Assembly has also expressly provided that the "findings and decisions" of the Secretary of State be set forth in a "written order" signed by the Secretary of State, and filed as a public record.

The S.E.C. under the Securities Act of 1933 has the power to prevent a registration statement from becoming effective or to suspend the effectiveness of a registration statement, only after notice, and an opportunity for hearing, all as set out in the provisions of Sections 8 (b) and (d) (15 U.S.C.A. § 77h(b) and (d)). Here again, the administrative hearings provided for are limited to "registrants" as contrasted to persons failing to make application for "registration."

The Uniform Securities Act likewise provides for notice, opportunity for hearing, and a written order by an administrator with respect to orders denying effectiveness or suspending or revoking the effectiveness of, registration statements. (Sec. 306)

Par. (J)

The provisions of this subsection are patterned on former subsection 119(2) of "The Illinois Securities Law" of 1919.

The "Administrative Review Act," Sections 264 to and including 279 of Chapter 110 of the Illinois Revised Statutes, 1959, provides a comprehensive and detailed method of review of administrative orders. It should be noted that this act supersedes all other methods of review such as actions of injunction, mandamus, and declaratory judgments. (See Section 265, Chap. 110, Ill.Rev.Statutes 1959). In addition, Section 274 of the Administrative Review Act provides that "the findings and conclusions of the administrative agency on questions of fact shall be held prima facie true and correct." It should be kept in

mind that the Supreme Court of Illinois, in a recent case decided in September, 1959, has held that where an Act has adopted Hearing Provisions and provided for judicial review under the "Administrative Review Act" that the Hearing is intended to be "the first step in resolving not only disputed questions of fact, but also nonfactual disputes of law and the interpretation of policy". (People ex rel. United Motor Coach Co., et. al. vs. Carpentier, 17 Ill.2d 303, 161 N.E.2d 97.)

Section 9(a) provides for a court review of orders of the S.E.C. under the Securities Act of 1933.

The Uniform Securities Act also provides for judicial review of administrative orders in the administration of that Act. (Sec. 411)

Par. (K)

The provisions of this section are based on former Section 119(1) of the 1919 Law.

When the power to obtain injunctions under this subsection is coupled with the right to obtain substituted service of process under Section 137.10B, the Secretary of State is very effectively armed to protect citizens of the State of Illinois from the activities of unregistered dealers, salesmen, and investment advisers and from the sale of non-exempt "unregistered" securities.

Section 20 of the Securities Act of 1933 (15 U.S.C.A. § 77t) provides the S.E.C. with the power to bring an action for injunction in any District Court of the United States.

The Uniform Securities Act also provides the administrator with the power to bring an action to enjoin acts or practices in violation of the Act or any rule or order thereunder. It should be noted that the Uniform Securities Act provides and requires that the administrator must go to court to get action against persons refusing to comply with the law, whereas the Illinois Securities Law of 1953 allows the Secretary of State to either attack such persons through administrative action or through the courts. (Sec. 408)

Par. (L)

This subsection is patterned on former Sections 118g and 119(3) of the 1919 Law. Its purpose, of course, is to give protection to administrators in the performance of their statutory duties in serving the public by the administration and enforcement of the law.

There is no comparable provision to this subsection in the Securities Act of 1933.

The Uniform Securities Act does not have a similar provision to the above subsection.

Par. (M)

The provisions of this subsection are based on the provisions of subsection (c) of Section 80b–10 of the Investment Advisers Act administered by the S.E.C. (15 U.S.C.A. § 80b–10(3)).

The Uniform Securities Act provides a general restriction on administrators or their officers or employees, prohibiting them from disclosing any information filed with or obtained by the administrator except when necessary or appropriate in a proceeding or investigation under the Act. (Sec. 406(b))

§ 137.12 Violation

This section sets forth nine different types of violations of the law. The provisions of subsection A with respect to selling a security "except in accordance with the provisions of this Act" were also found in former Section 124, 125, 127 and 131 of "The Illinois Securities Law" of 1919.

The provisions of subsection B requiring the delivery of a prospectus was entirely new with the 1953 Law. While the 1919 Law provided that issuers or applicants for registration of securities would file 25 copies of information, and also make such information available to the public, there was no specific requirement that there be any delivery of "statements" to a purchaser of securities. The violation set out in this subsection is based on Section 5 of the Securities Act of 1933.

The provisions of subsection C are based on former Section 124 of the 1919 Law.

The provisions of subsection D are based in part on former Section 131 of the 1919 Law. That part of this subsection making it a violation to "fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11" is a newly added provision by the 1953 Law.

The provisions of subsection E relative to clause (1) is based on former Section 128 of the 1919 Law, although it differs in that under the 1919 Law the Act of "signing" or "circulating" was necessary, whereas under this subsection the act of "making" or "causing to be made" in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State, is necessary

to constitute a violation. Former Section 116 of the 1919 Law provided that no person could publish any advertising matter containing any statement to the effect that the security has been in any way endorsed or approved by the Secretary of State, and accordingly, Clause 2 of subsection E is based on this provision of former Section 116 of the 1919 Law.

The provisions of subsection F are based upon a comparable provision in Section 17 of the Federal Securities Act of 1933. The 1919 Law had no such similar broad provision.

The provisions of subsection G are based on Section 17 of the Federal Securities Act of 1933. No such similar provision was found in the 1919 Law, although there are relatively similar provisions with respect to the use of false statements in "statements" filed under the 1919 Law.

Subsection H is patterned on Section 12 of the Federal Securities Act of 1933, although it is worded in a somewhat different fashion. In addition, a similar provision was found in Section 128 of the 1919 Law.

Subsection I was added by the amendments of 1955. The purpose of this amendment was to broaden the field of admissible evidence in securities violation cases and to permit the presentation of evidence with respect to the entire scheme to defraud, which is permissible in prosecuting persons charged with a "device, scheme, or artifice to defraud". Quite a different impression is made on a jury if the prosecution's evidence is limited to the sale of securities to one or two individuals for a total of $100 or $200 each than where the evidence shows that 25 or 30 people were each defrauded of the same amount of money. The wording of this subsection is based on a comparable provision in Section 17 of the Securities Act of 1933. (See Holmes vs. U. S., 1943, 134 F.2d 125).

While the Uniform Securities Act has, in the main, similar violation provisions, they are not grouped into one convenient section such as those found in the above section of the Illinois Securities Law of 1953.

§ 137.13 Civil remedies

While the 1919 Law provided for civil liability with respect to the sale of securities in violation of the law, under former Section 132(1), and in the main, such provisions are found in the above section. Nevertheless, certain important changes were made with respect to civil lia-

bility by the Illinois Securities Law of 1953. The changes will be noted in the comments following.

The provisions of this section make the Illinois Securities Law of 1953, in large measure, self-enforcing by private persons. It should be noted that sales in violation of the Act are "voidable"; that a tender must be made by the seller either into court or to the seller of the securities; that each underwriter, dealer or salesman who "participated or aided in any way in making such sale" is liable, and that the purchaser is entitled to interest and attorney's fees. Similar provisions for civil liability were sustained as constitutional in the 1919 Securities Law in the case of Stewart vs. Brady, 300 Ill. 425, 133 N.E. 310.

The provision allowing the purchaser to recover interest or the dividends stipulated in the securities sold, less any income or other amounts received by the purchaser is a new provision not found in the 1919 Law.

Subsection B requiring notice of an election to rescind a purchase be given by the purchaser within six months after the purchaser receives knowledge that the sale was voidable, is a new provision. The purpose of this change is to cut down the liability period, primarily with respect to inadvertent violations, so that the purchaser of securities sold in violation of the law cannot wait for the entire period of the statute of limitations to decide whether or not to bring suit.

The provisions of subsection C are also new to the Illinois Law and the purpose of this provision is to allow a seller of securities in violation of the law to cut down on the period of liability by making an offer of rescission to the purchaser, which the purchaser must accept or refuse within thirty days after receipt of the offer.

The provisions of subsection D of this section cut down the period of limitations, for the bringing of an action, from five years in the 1919 Law to three years.

The provisions of subsection E are particularly important to purchasers since the purpose of this subsection is to provide that a cause of action under this Section 13 survives the death of a decedent. Under the 1919 Law, death of purchaser would abate the action since a suit for rescission under the Securities Law was a statutory action and did not survive the death of the purchaser.

§ 137.14 Penalties

The provisions of this section generally divide the various types of violations set out in Section 137.12 into two classes: misdemeanor and felony. Penalty provisions in the 1919 Law were found in Sections 124,

125, 126, 127, 128 and 129. All of the violations in those former sections of the 1919 Law, constituted misdemeanors with the exception of a violation of Section 129 relating to the sale of securities by an officer, director, solicitor or broker for any issuer knowing such issuer to be insolvent and the sale of any securities issued by such issuer under such circumstances.

Under the 1919 Law, the penalty for a first violation was generally a fine up to $10,000 and imprisonment in the county jail for a period not exceeding one year. The provisions of subsection A with respect to misdemeanors cut the maximum fine down to $5,000.

Subsection B of this section, relating to the more serious violations of the law, increases the period of possible imprisonment to imprisonment in the penitentiary for not exceeding three years. This may be contrasted to imprisonment in the county jail not exceeding one year with respect to most violations in the 1919 Law.

Subsection D makes the proper venue for prosecution of violations either the county in which the securities were sold or offered for sale, or the county where the securities were delivered, or proposed to be delivered, to the purchaser. Similar venue provisions were found in Section 132(4) of the 1919 Law.

Subsection C of this section cuts down the period of time in which criminal prosecution may be commenced to three years whereas the 1919 Law provided a period of limitations of five years in former Section 135.

The provisions of subsection E increase the penalties, as compared to the 1919 Law, by providing that persons guilty of second or subsequent offenses can be fined up to $25,000 and imprisoned in the penitentiary up to five years, or both.

The provisions of subsection F are based on former Section 133 of the 1919 Law. This section was probably never necessary but was continued in the 1953 Law in an "abundance of caution".

The Securities Act of 1933 provides penalties, including a fine up to $25,000 and imprisonment in the penitentiary for not exceeding five years.

The Uniform Securities Act provides penalties upon conviction of violation of that Act by a fine not to exceed $5,000, or imprisonment for a period not to exceed three years, or both. (Sec. 409(a))

§ 137.15 Evidentiary matters

The provisions of subsection A, placing the burden of proving an exemption upon the party raising the defense, was taken from former Section 132(2) of the 1919 Law. The provisions of subsection A placing the burden on the person claiming an exemption to prove such defense has been held proper in the case of Taft vs. Otte & Co., 274 Ill.App. 280.

No similar express provision to the above subsection is found in the Federal Securities Act of 1933, however court decisions have interpreted the burden of proof to be on the person claiming an exemption. (McKelvey vs. U. S., 43 S.Ct. 132, 260 U.S. 353, 67 L.Ed. 301).

The Uniform Securities Act also requires that a person claiming an exemption be given the burden of proving such exemption. (Sec. 402d)

The provisions of subsection B of this section making admissible in any civil or criminal action, a certificate of the Secretary of State stating compliance or non-compliance with the provisions of the Act as prima facie evidence of such compliance or non-compliance, are taken from former Section 132(5) of the 1919 Law. Such a Certificate has been held competent as evidence that a corporation had not complied with the Act, in the case of Morrison vs. Farmers Elevator Company, 150 N.E. 330, 319 Ill. 372 and in People vs. Love, 310 Ill. 558, 142 N.E. 204. Any such Certificate of Compliance or non-compliance must be limited to the actual facts and should not contain broader language than the actual facts that the Secretary of State is competent to certify. (See People vs. Love, 310 Ill. 558, 142 N.E. 204).

Neither the Federal Securities Act of 1933 nor the Uniform Securities Act provide for the issuance of "Certificates of Compliance or Non-compliance".

The provisions of subsection C were added by the Securities Law of 1953, in view of the increasing general acceptability of photo copied documents as evidence in lieu of the original documents.